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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

INDIANAPOLIS COLTS,

Petitioner,

vs.

MAYOR AND CITY COUNCIL OF BALTIMORE, and CAPITAL IMPROVEMENT BOARD OF MANAGERS OF MARION COUNTY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Rule 28.1 Statement

Indianapolis Colts, Inc. does not have any parent companies. It has a subsidiary by the name of Colt Center Co., and its affiliates are Colt Construction and Development Co. and Robert Irsay.

QUESTION PRESENTED FOR REVIEW

Whether a federal court has interpleader jurisdiction under 28 U.S.C. §1335 to hear and adjudicate the conflicting claims of two cities, each demanding the benefits and services of a single professional football team?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on August 10, 1984, in its Case No. 84-1649, entitled *Indianapolis Colts v. Mayor and City Council of Baltimore, et al.*

OPINIONS BELOW

The opinion of the Court of Appeals' majority and the related dissenting opinion by Judge Coffey are reported at 741 F.2d 954 (7th Cir. 1984) and are set out in the Appendix at A-1. That Court's order denying a petition for rehearing and rejecting a request by the dissenting judge for rehearing *en banc*, with Judges Coffey and Cudahay dissenting, is set out in the Appendix at A-47. An earlier opinion of the Court of Appeals staying the orders of the District Court, the tentative conclusions of which were not adopted in the final opinion, is reported at 733 F.2d 484 (7th Cir. 1984) and is set out in the Appendix at A-17. The findings of fact and conclusions of law of the District Court holding that sufficient adverse claims exist to confer federal interpleader jurisdiction under 28 U.S.C. §1335 are set out in the Appendix at A-24. The restraining order and supplemental restraining order of that court enjoining further attempts to obtain Petitioner's property by eminent domain are set out in the Appendix at A-43 and A-45, respectively.

JURISDICTION

The final judgment of the Court of Appeals was entered on August 10, 1984, and Petitioner's timely petition for rehearing was denied on October 15, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1), the timeliness of the petition being governed by 28 U.S.C. §2101(c) and Rules 20.2 and 20.4 of the revised rules of the Supreme Court of the United States.

STATUTE INVOLVED

This case involves the statutory grant of jurisdiction to the federal courts in interpleader cases, 28 U.S.C. §1335, which provides as follows:

> "(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature

of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if

"(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper. conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

"(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another."

STATEMENT OF THE CASE

The Indianapolis Colts, Inc. ("Colts") is a professional football organization which is a member of and participates in the National Football League ("NFL"). Until the end of the 1983 NFL season, the Colts' home football games were played in Baltimore Memorial Stadium, under an Agreement of Lease between the Colts and Baltimore's Board of Recreation and Parks. The actual business operations of the Colts, other than the staging of

home games, were conducted outside the city limits of Baltimore, in Owings Mills, Maryland. In February, 1984, following the close of the 1983 season, the Colts and a representative of the Capital Improvements Board of Marion County (the "CIB"), began negotiating the possibility of relocating the team's operations from Owings Mills to Indianapolis. Discussions took place over a six-week period, concluding on March 27, 1984. Finding No. 6 at A-26.

During this same period, the Colts were engaged in negotiations with the Mayor and City Council of Baltimore ("Baltimore"). On March 27, in an apparent change of tactics by Baltimore, one house of the Maryland legislature suspended its rules to pass a bill intended to allow Baltimore to acquire the Colts by eminent domain This bill had been under consideration for some time, without significant progress, until the precipitous action of March 27.

The bill as ultimately passed two days later purported to amend the general powers article of the Baltimore City Charter to permit the city to acquire by purchase or eminent domain any professional sports franchise having the right to represent Baltimore City on January 1, 1983, including, without limitation, the franchise right to compete in an organized league, the business that owned or operated the franchise, all contract rights incident to the franchise, and all interests in real and personal property associated with the franchise and located in Maryland.

The next day, March 28, 1984, upon learning of this imminent attempt to condemn its property, the Colts decided to move its NFL franchise to Indianapolis. Later on March 28, the CIB and Colts executed an agreement (the "CIB Agreement") containing the substance of the negotiations. That same day, the CIB immediately began taking actions and incurring significant expenses and obligations in reliance upon the validity and enforceabiiity of the CIB Agreement. The CIB Agreement was later ratified by the full CIB, making it effective as of its execution.

The CIB Agreement requires present performance by the Colts of numerous obligations, including the obligation to play all of the Colts' preseason and regular season home games in the Hoosier Dome in Indianapolis, beginning in 1984, for a term of twenty years. *See* Paragraphs 3.1 and 4.1. The CIB Agreement imposes other obligations on the Colts incident to their playing in Indianapolis. Paragraph 10.3 obligates the Colts to pay the CIB for various expenses relating to day-of-game personnel. Paragraph 10.4 obligates the Colts to reimburse the CIB for expenses incurred in season ticket distribution. Paragraph 25 obligates the Colts to provide insurance and to indemnify the CIB against certain occurrences. Paragraph 29 obligates the Colts to do business as, operate as and be known as the "Indianapolis Colts." In addition to these obligations relating to the operation of the franchise, Paragraph 11 gives the CIB a first refusal right to acquire the stock or the Colts' franchise or to find a suitable buyer or franchisee in the event transfer of the stock or franchise is contemplated. *See* Finding No. 16 at A-31.

Approximately four hours after executing the CIB Agreement, on March 28, the Colts began moving its property, including their books, records and certificate of membership in the NFL, from Owings Mills, Maryland to Indianapolis. Since March 29, that property has been located in Indianapolis, where the Colts are conducting their professional football team operations. *Id.*

On March 29, the Maryland legislature passed the emergency eminent domain legislation, which was then immediately signed by the Governor of Maryland. The following day, March 30, Baltimore passed Ordinance No. 32, authorizing it to condemn the Colts' franchise and other property, and filed a condemnation action. The CIB was not joined in the condemnation proceeding, despite the fact that Baltimore sought to prohibit performance of the CIB Agreement by taking away the Colts' right to play home games in Indianapolis. A Maryland state trial court

promptly entered an order restraining the Colts from taking any action to transfer the franchise and related contract rights, from seeking the NFL's consent to the transfer, or from "persuading or inducing any person, corporation, association, or entity" to accomplish or attempt to accomplish such a transfer.[1] The District Court below found that the Colts had "completed moving [their] property, including books and records, to Indianapolis prior to the *commencement* of Baltimore's condemnation action and the entry of the restraining order." Finding No. 14 at A-30 (emphasis supplied).

The CIB Agreement permits the CIB to obtain specific performance of the Colts' obligations. On April 5, counsel for the CIB sent a letter to the Colts, referring to the condemnation suit and noting that the relief sought by Baltimore would conflict with the Colts' obligations under the CIB Agreement, such as the Colts' obligation to play its games in Indianapolis for twenty years, the CIB's "right of first refusal" concerning purchase or transfer of the Colts, and the CIB's obligation to construct a permanent training and practice complex for the Colts. In light of this apparent conflict, the CIB demanded that the Colts "immediately provide CIB with assurances that the Club has the present ability, legally and in fact, to perform all of its rights, duties and obligations under the Agreement...." Finding No. 19 at A-33.

Faced with conflicting claims by Baltimore and the CIB to the Colts' franchise and property, the Colts filed this action in the nature of interpleader on April 5 in the District Court for the Southern District of Indiana, invoking the jurisdiction of the District Court under 28 U.S.C. §1335. On April 5, 1984, the District Court issued an order restraining Baltimore from continuing its Maryland

[1] On April 2, the Colts removed the state court condemnation proceeding to the United States District Court for the District of Maryland.

state court action against the Colts and from instituting additional actions intended to acquire possession of the franchise or property of the Colts. A copy of this order appears in the Appendix at A-43.

The day after the District Court entered the order restraining Baltimore from further legal action relating to the Colts, Baltimore filed an action against the NFL in the Circuit Court for Baltimore City. The complaint alleges that the purpose for the action is to assist Baltimore in its attempts to acquire the Colts' franchise. The Circuit Court in that suit enjoined the NFL from engaging in various activities necessary for the Colts' preparation to play football in 1984 so long as the Colts were located and operating outside Baltimore.

In response to the Colts' Petition for Hearing and Supplemental Restraining Order, the District Court held a two-day hearing and on April 19 entered a supplemental restraining order, enjoining Baltimore's prosecution of the suit against the NFL. A copy of this order appears in the Appendix at A-45. Findings of Fact and Conclusions of Law were entered on April 30.

The District Court specifically found facts sufficient to support interpleader jurisdiction. It found that Baltimore had initiated condemnation proceedings against the Colts (Finding No. 13 at A-29), that the Colts were obligated to perform the CIB Agreement, that the CIB Agreement had created rights in the CIB (Finding No. 16 at A-31), that the Colts have no present means to avoid the CIB Agreement (Finding No. 18 at A-32), and that the CIB had demanded assurances that the Colts would perform their obligations under the CIB Agreement notwithstanding the condemnation suit (Finding No. 19 at A-33). The District Court therefore concluded that the Colts had "demonstrated sufficient adverse claims, or potential adverse claims, between Baltimore and the CIB to confer interpleader jurisdiction on this Court pursuant to 28 U.S.C. §1335." Conclusion No. 3 at A-39.

Paragraph 21.6 of the CIB Agreement gives the Colts certain termination rights, none of which, however, were available to the Colts, or are available in the forseeable future, to avoid the obligations of the CIB Agreement.[2] Paragraph 21.6(a)(i) provides a notice and option procedure for the Colts to terminate the CIB Agreement in the event of litigation designed to acquire the Colts by eminent domain. As the District Court found, this provision "was to be operative only if injunctive or other proceedings made it physically impossible for the [Colts] to move [their] property and operations to Indianapolis from Maryland." Finding No. 17 at A-32. The District Court thus found that the Colts could not have invoked Paragraph 21.6(a)(i) following commencement of the eminent domain suit, because performance of the CIB Agreement had not been

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[2] Additional termination rights are provided in the Force Majeure section of the CIB Agreement for situations in which the Colts' operations are suspended by acts beyond the Colts' control. Paragraph 24.2 of the CIB Agreement provides:

> 24.2 *Governmental Prohibition.* In the event that a. y games contemplated by this Agreement cannot be played as provided herein as the result of any municipal, state, federal or other statute, judgment, order, rule, regulation, ordinance, action, restriction or proclamation, or in the event that the playing of any such game should be restrained or enjoined by any court or administrative body, Ratable Abatement, as provided for in Paragraph 24.5 hereof, shall occur and the same continues for more than six months, Club may in its sole discretion at any time thereafter while such conditions continue terminate without penalty or payment whatsoever upon thirty (30) days prior written notice to Board and thereupon this Agreement shall cease, terminate and be of no further force or effect in the same manner as if the termination date set forth in such notice were the date herein specifically fixed for the expiration of the Term of this Agreement.

While no evidence was presented to the District Court about the meaning of this paragraph, its context indicates that a total suspension of operations, rather than a mere relocation, is required to invoke the paragraph. Further, eminent domain orders are specifically addressed in Paragraph 21.6.

rendered impossible by a court order halting the Colts' physical removal from Maryland. *Id.* This termination provision never was and now cannot be exercised by the Colts. Paragraph 21.6(a)(iii) allows the Colts to terminate the CIB Agreement upon entry of a final order of a court of final appellate jurisdiction condemning the franchise or requiring the Colts to play elsewhere than at the Hoosier Dome. The District Court found that prior to the entry of such a final order by such a court of final appellate jurisdiction, the Colts cannot avoid their obligations under the CIB Agreement. Finding No. 18 at A-32.

On appeal, the majority of the Seventh Circuit panel reversed the District Court's exercise of jurisdiction. The majority concluded that since the CIB's claim to the Colts' franchise arose under a lease and Baltimore's claim to the Colts' franchise arose by eminent domain, the CIB and Baltimore are not claimants to the same stake. Thus, the majority found interpleader jurisdiction lacking, stating that "[i]nterpleader is proper in cases such as a surety confronted by claims of subcontractors and materialmen which exceed the surety's contractual liability, conflicting claims of entitlement to the proceeds of a life insurance policy, or automobile insurers surrendering the maximum sum of their liability to the court for disposition to plaintiffs in an accident case." (A-5). As an alternative ground for its decision, the majority held that the possibility that the Colts might ultimately avoid liability to the CIB under the CIB Agreement defeated interpleader jurisdiction.

Circuit Judge John Coffey dissented. Noting that the majority had "completely ignore[d]" the District Court's findings of fact, his opinion concluded that both the CIB and Baltimore were attempting to claim the Colts for their respective cities and, thus, they were asserting adverse claims to a common identifiable stake. Judge Coffey also pointed out that prior to the entry of a final, unappealable

order of condemnation in Baltimore's eminent domain case, the Colts are subject to the probability of vexatious, conflicting claims in the form of the obligations of the CIB Agreement "to play all pre-season and home games in the Indianapolis Hoosier Dome" and an injunction obtained by Baltimore "to enjoin the Colts from playing any games in Indianapolis to prevent the Colts from becoming further entrenched in the Indianapolis market." (A-14).

REASONS FOR GRANTING THE WRIT

Beneath the surface novelty, this case presents a straightforward application of the federal interpleader jurisdictional statute—the owner of a professional football franchise faced with conflicting claims by two cities which desire professional football games in their respective cities.

In reversing the trial court's exercise of jurisdiction, however, the Court of Appeals' majority failed to follow the clear language of the statute allowing interpleader when the claims are not identical. Moreover, this decision conflicts with the decisions of this Court and of other circuits of the Court of Appeals. Rather, the majority chose to ignore the district court's findings of fact and to instead place new, unwarranted restrictions on the use of interpleader. Its decision denies the Colts due process of law and penalizes the Colts for seeking to limit potential losses.

1. The Rejection of Jurisdiction by the Court of Appeals Below Conflicts Directly with the Language of 28 U.S.C. §1335(b) and with the Prior Decisions of this Court and the Court of Appeals

a. The Decision Below Judicially Rewrites the Jurisdictional Statute

The Court of Appeals majority denied interpleader

jurisdiction on the basis that the conflicting claims facing the Colts are not identical, ownership claims. The majority explained its holding at pp. 4-5 of its opinion (A-4, A-5) as follows:

> The CIB and Baltimore are not claimants to the same stake. Baltimore seeks ownership of the Colts franchise, whereas the CIB has no claim to ownership of the franchise. Instead, the CIB has a lease with the Colts that requires the team to play its games in the Hoosier Dome and imposes other obligations to ensure the success of the enterprise.
>
> * * *
>
> The Colts' argument here that the "bottom line" of this case is which city "gets" the Colts clouds the issue of adversity. Only reasonable legal claims can form the adversity to the plaintiff necessary to justify interpleader. The CIB has no reasonable legal claim to ownership of the franchise sought by Baltimore. For the Colts, losing their franchise to Baltimore may lead to breach of the lease claims by the CIB, but this is not a situation for which interpleader was designed.
>
> (citations and footnotes omitted).

In reaching these conclusions, the majority was forced to ignore the "extensive list of findings of fact" entered by the District Court characterizing the stake. Dissent at p. 8, A-9[3]. These findings, entered after a two-day

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[3] This, of course, is directly counter to this Court's holdings in such cases as United States v. National Association of Real Estate Boards, 339 U.S. 485, 495-496 (1950), in which the Court held (citations omitted):

> [I]t is not enough that we might give the facts another construction, resolve the ambiguities differently, and find a more sinister cast to actions which the District Court deemed innocent. . . . We are not given those choices, because our mandate is not to set aside findings of fact "unless clearly erroneous."

evidentiary hearing, characterized the stake as "the rights and privileges of the [Colts] franchise and the property rights incident to the operation thereof." A-40. The District Court recognized by this definition that the presence of a professional football team in a city has impact beyond a mere landlord-tenant relationship for a stadium and is thus highly coveted.

Historically, interpleader developed as an equitable device to protect those whose property or services were similarly in demand and who did not know to whom they should render a debt or duty or were "in danger of trouble from both the claimants."[4] The federal interpleader jurisdiction statute, 28 U.S.C. §1335, continues these historical traditions.

Although federal interpleader jurisdiction was originally limited to insurance companies and had become engrafted with various common law restrictions, in 1936 Congress amended the statute to extend interpleader protection to all potential stakeholders and to expressly abolish the "requirements" that all claims relate to the same debt or duty and arise from the same source. As amended, 28 U.S.C. §1335(b) provides:

> (b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

Thus, federal jurisdiction is predicated only on the *adversity* of the claims, rather than their origins or identity. This Court has stated more than once that the statute is to be given a "liberal" interpretation in order to effect its equitable purposes. *State Farm Fire & Casualty*

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[4] Practical Register in Chancery 78 (Wyatt ed. 1800) *reprinted in* Hazard, Jr. & Moskovitz, *An Historical and Critical Analysis of Interpleader*, 52 Calif. L. Rev. 706, 715 (1964). *See also* Rogers, *Historical Origins of Interpleader*, 51 Yale L. J. 924 (1942).

Co. v. Tashire, 386 U.S. 523, 533 (1967); *Sanders v. Armour Fertilizer Works*, 292 U.S. 190, 199 (1934). Even discounting a liberal interpretation, however, the statute itself commands the federal courts to ignore the origin or identity of claims in considering the existence of interpleader jurisdiction.

As pointed out by Judge Coffey's dissent, Baltimore and the CIB are each seeking the same result—the playing of NFL football games in their respective cities. A public body cannot under NFL rules own a team for more than a brief moment, as recognized by the courts in the Oakland Raiders case, *City of Oakland v. Oakland Raiders*, 31 Cal. 3d 656, 646 P.2d 835, 843, 183 Cal. Rptr. 673 (1982), and by Baltimore's own condemnation ordinance. Baltimore, a public body with certain condemnation powers and owning a stadium, seeks the stake on behalf of the City of Baltimore through condemnation, immediate sale to a sympathetic third party, and then negotiated agreement. The CIB, also a public body with certain condemnation powers and also owning a stadium, is now exercising rights respecting the same stake on behalf of the City of Indianapolis—having already negotiated successfully to the end sought by Baltimore, a long-term agreement tying the franchise to the Indianapolis stadium and community.

The fact that the claimants to the Colts' NFL franchise are seeking to reach their goals by different means does not change the reality that those claimants are asserting claims to the same stake. The CIB has accomplished its goal by agreement with the Colts, and games are currently being played in Indianapolis. Baltimore, having been unsuccessful in negotiating such an agreement and having no legal right to prevent the expiration of the lease for Baltimore Stadium, resorted to filing a unique eminent domain action to accomplish the same result. Since the NFL Constitution prevents Baltimore from owning the Colts, a perceived distinction between the claims of

Baltimore and the CIB based on labeling one "ownership" and the other simply a "lease" does not alter the dispositive fact that both claimants seek the identical result and claim the same "stake." It also does not alter the fact that the Colts are now the object of a legal "tug of war" between two cities for their franchise.

The dissenting opinion below clearly recognized the adversity of the claims presented and that in view of the express mandate of 28 U.S.C. §1335(b), interpleader jurisdiction was established:

> The claim asserted by the CIB is not, as the majority contends, a simple contract interest, rather it involves the rights, benefits, and privileges of a National Football League franchise formerly known as the Baltimore Colts. It is this intangible, but very unique, property right that the CIB seeks to control by enforcing the terms of its Lease. A realistic view of the facts at hand reveals that the CIB was organized to improve and expand the greater Indianapolis economic market.
>
> * * *
>
> The full intent of the CIB as embodied in the Lease is to keep the Colts in Indianapolis and thereby enjoy the rights and privileges of a National Football League franchise. The City of Baltimore also clearly desires these very same rights and privileges and thus, contrary to the majority's simplified analysis, there does exist in this case a common, identifiable stake—the rights and privileges of the Colts' franchise—subject to adverse claims.
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> Dissenting Opinion at pp. 12-13, A-12, A-13.

The Court of Appeals majority's analysis of the types of claims necessary for interpleader effectively nullifies §1335(b) and re-institutes the identity of claims and common origin rules that Congress removed in 1936. In

addition to judicially rewriting the statute, the Court of Appeals' decision threatens to deny federal interpleader to a vast number of potential stakeholders who cannot meet the technical interpleader rules of the nineteenth century.[5] This result is unacceptable and deserves review and reversal by this Court.

b. The Decision Below Conflicts with Prior Decisions of this Court and Other Circuits in the Court of Appeals

In addition to the policy of liberal construction of the interpleader jurisdictional statute, *State Farm Fire & Casualty Co. v. Tashire*, 386 U.S. 523, 533 (1967), this Court and other circuits of the Court of Appeals have previously upheld the exercise of federal interpleader jurisdiction when the claims were neither identical nor of common origin, even prior to the 1936 amendment clarifying the interpleader statute. The Court of Appeals majority's decision is directly in conflict with these prior holdings.

In *Sanders v. Armour Fertilizer Works*, 292 U.S. 190 (1934), Sanders, a resident of Texas, had defaulted on notes given to Armour, an Illinois corporation. Sanders' homestead had burned, and he was entitled to receive insurance money on insurance contracts from two Connecticut insurance companies. In an attempt to collect on its Illinois judgment, Armour began Illinois garnishment proceedings against the insurance companies to obtain the insurance money. Such funds were exempt from garnishment under the law of Texas but not under the law of Illinois. The insurance companies were thus faced with a contract claim by Sanders to the money and an in

[5] For example, in Dungey v. Angove, 2 Ves. Jr. 304, 30 Eng. Rep. 644 (Ch. 1794), a tenant faced conflicting claims on the one hand from his landlord for rent due under a lease and on the other hand from a third party asserting title to the property for use and occupation of the premises. Interpleader was denied on the grounds that one claim was in contract and one was not. *See also, e.g.*, Crane v. Burntrager, 1 Ind. 165, 1 Smith 156 (1848).

rem, lien-type garnishment claim by Armour to the money. The companies filed a federal interpleader action to resolve the conflict, and on appeal, this Court sustained the exercise of jurisdiction, recognizing even before the interpleader statute was amended that adversity is the key concept. Justice McReynolds, writing for the majority, adopted the Circuit Court of Appeals' holding that adversity of claims does not require identity or a common origin:

> Objection to jurisdiction of the District Court is now made upon the theory that the defendants are not adverse claimants within the intendment of the Interpleader Act since one admits the attached debt is payable primarily to the other and seeks to recover because of his indebtedness to it. The court below adequately answered this contention.—
>
> "We think that the facts in this case show that the District Court is mistaken in concluding that the claims of Armour and Sanders are not adverse. Each is claiming the proceeds of the policies to the exclusion of the other. Armour claims by virtue of its Illinois judgment against Sanders and the attachment, and Sanders, while not disputing his obligation to Armour, claims the proceeds, notwithstanding, by virtue of the exemption under the laws of Texas. The statute is remedial and to be liberally construed. It is broad enough to cover any adverse claims against the proceeds of the policies, no matter on what grounds urged. Its terms are not to be interpreted as meaning only adverse claims of those pretending to be beneficiaries of the insured."
>
> *Id.* at 199.[6]

[6] In a much earlier case, Pacific National Bank v. Mixter, 124 U.S. 721 (1888), this Court upheld jurisdiction of a suit in equity by a bank receiver to interplead the bank with the bank's attaching creditors. The bank had deposited securities with a surety as an attachment bond. The bank wanted its securities back, and the creditors wanted to execute on the bond. Thus, the claimants did not even want the same physical thing, but the claims were still adverse.

Similarly, the Colts were faced, and continue to be faced, with a claim arising under a contract—the lease—and a claim purporting to be in rem which, if successful, might defeat the contract claim. The facts are similar to those in *Sanders*, yet the Court of Appeals denied interpleader jurisdiction, contrary to this Court's holding in *Sanders*.

Other circuits of the Court of Appeals have also held that §1335(b) means what it says and, thus, claims need not be identical ownership claims with a common origin. In *Edner v. Massachusetts Mutual Life Insurance Co.*, 138 F.2d 327 (3d Cir. 1943), the Third Circuit held interpleader jurisdiction to be present when one claimant claimed the cash surrender value of a life insurance policy and the other claimant merely asserted the right to continue the policy in force. Similarly, in *Holcomb v. Aetna Life Insurance Company*, 228 F.2d 75 (10th Cir. 1955) the Tenth Circuit held interpleader jurisdiction to be present when one group of claimants sought cancellation of an annuity policy and refund of premiums paid and the other group of claimants sought the continuation of annuity payments.

In these cases both the Third and Tenth Circuits of the Court of Appeals held that a stakeholder need not be faced with identical ownership claims to the stake in order to invoke a federal court's interpleader jurisdiction. The Seventh Circuit majority's holding denying interpleader to the Colts is squarely in conflict with the law in these other circuits, and it should be considered by this Court and reversed.

2. The Decision Below Denies Petitioner Interpleader for Seeking to Protect its Interests

Prior to moving the Colts football team from Baltimore to Indianapolis, Petitioner and the CIB engaged in six weeks of extensive negotiations to produce an agreement governing use of the Indianapolis facilities and the respective obligations of the Colts and the CIB relating to

the move. One of the results of those negotiations was a clause in the CIB Agreement allowing the Colts to terminate the Agreement if Baltimore were ultimately successful in any attempt to condemn the franchise. Dubbed by the Court of Appeals majority an "escape clause," Paragraph 21.6(a)(iii) of the CIB Agreement provides a right of termination to the Colts after all appeals of a successful condemnation order or order restricting playing location have been exhausted:[7]

> (iii) If Club is ordered *by a final order of such court of final appellate jurisdiction* to play other than at the Stadium or the Franchise is acquired by eminent domain, this Agreement shall terminate at Club's option, and the parties shall have no further obligations hereunder except as stated in this Paragraph [dealing with a few final financial affairs].
>
> (emphasis supplied)

The emphasized portion of the above paragraph limits any termination right to a time when all appeals of such an order have concluded. Prior to that time, no right of termination exists under the quoted paragraph, as found by the District Court in its Finding of Fact No. 18 (A-32). Thus, the Colts could easily be placed in a vexatious situation, the avoidance of which is a purpose of interpleader, *State Farm Fire & Casualty Co. v. Tashire*, 386 U.S. 523, 534 (1967), whereby they were obligated to perform under the CIB Agreement (and subject to a specific performance order if they did not) and simultaneously prohibited from performing by an interlocutory order, or a final but still appealable order, obtained by Baltimore.

The danger that Baltimore might obtain such an order is not imagined, but very real. Baltimore has attempted on

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[7] This paragraph was quoted, together with an introductory portion, in the majority opinion, A-6.

five separate occasions to obtain orders disrupting the Colts' Indianapolis business operations: twice in the Circuit Court for Baltimore City,[8] once in the United States Bankruptcy Court for the District of Maryland,[9] once in the United States District Court for the Southern District of Indiana,[10] and once in the Court of Appeals.[11] Twice Baltimore has been successful in obtaining orders which could have "wreck[ed] the Colts' upcoming football season, imposing immense financial losses on owners and players alike."[12] *Indianapolis Colts v. Mayor and City Council of Baltimore*, 733 F.2d 484, 488 (7th Cir. 1984). Most recently, subsequent to the decision of the Court of Appeals, Baltimore filed yet another action seeking an order

> enjoining the [Colts] from fielding a professional football team in the NFL under any name other than the Baltimore Colts, from playing regular home

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[8] "Petition for Condemnation and Injunctive Relief" filed March 30, 1984, in *Mayor and City Council of Baltimore v. Baltimore Football Club*, No. 84090060-L18657 (Cir. Ct. for Baltimore City), *currently pending as* No. 84-1294 (D.Md.); "Petition for Ex Parte and Permanent Injunctions" filed April 6, 1984, in *Mayor and City Council of Baltimore v. National Football League*, No. 84097029/E-18941 (Cir. Ct. for Baltimore City), *currently pending as* No. 84-1294 (D.Md.).

[9] "Complaint for Injunctive Relief" and "Motion for Temporary Restraining Order" filed April 6, 1984, in *Mayor and City Council of Baltimore v. Baltimore Football Club, Inc. (In re Baltimore Football Club, Inc.)*, No. 84-B-0526, Adversary No. 84-0100B (Brtcy. Md.).

[10] "Response of Defendants Mayor and City Council of Baltimore to Petition for Hearing and Supplemental Restraining Order, and Defendants' Motion for Preliminary Injunction" filed April 13, 1984, in *Indianapolis Colts v. Mayor and City Council of Baltimore and Capital Improvement Board of Managers of Marion County*, No. IP84-652C (S.D. Ind.).

[11] "Emergency Motion of Defendants-Appellants for Stay and Injunction Pending Appeal" filed April 23, 1984, in *Indianapolis Colts v. Mayor and City Council of Baltimore and Capital Improvement Board of Managers of Marion County*, No. 84-1649 (7th Cir.).

[12] Orders were entered in response to the petitions in note 8, *supra*.

> games in any city other than Baltimore City, and from attempting to relocate the franchise conferred upon it by the NFL to any location other than Baltimore City until such time as the league shall approve a transfer in accordance with its Constitution and By-Laws.[13]

Notwithstanding this potential conflict, the majority again ignored the District Court's findings of fact, and the clear language of Paragraph 21.6(a)(iii), drew an unusual distinction between adversity of claims and the possibility of vexatious, conflicting claims, and held that the Colts' fear of vexatious, conflicting claims is unreasonable because "the Colts and the CIB...specifically contracted that the lease obligations will terminate at the Colts' option if the Colts' franchise is acquired by eminent domain" (A-6). The dissenting opinion points out, however, that despite the ultimate ability of the Colts to terminate the CIB Agreement, the Colts face a potential *present* conflict in the interim:

> It is probable, indeed likely, that during the course of an eminent domain proceeding in the Maryland district court, Baltimore will again seek to enjoin the Colts from playing any games in Indianapolis to prevent the Colts from becoming further entrenched in the Indianapolis market. There is absolutely nothing in the record before this court to suggest that a new injunction similar to the one previously issued by the Maryland state court will not be entered when the Colts' interpleader action is dismissed. Such an injunction would prevent the Colts from preparing for the upcoming season and preclude the franchise from fulfilling its obligation to play all pre-season and home games in the Indianapolis Hoosier Dome. The Colts' hands would be tied under the terms of the contract for

[13] "Complaint" filed January 3, 1985, in *Mayor and City Council of Baltimore v. Indianapolis Colts, Inc., Capital Improvement Board of Managers of Marion County, William H. Hudnut, David R. Frick, John B. Smith, and Aero-Mayflower Transit Co., Inc.*, No. B-85-0020 (D.Md.).

they would not be able to terminate the Lease because no final unappealable order of eminent domain would have been entered. Thus, the CIB would be fully justified in suing the Colts for breach of their contractual duties. The Colts would unnecessarily be presented with simultaneous, adverse, and vexatious claims from both the CIB and the Baltimore City Council.

As a result of the Court of Appeals' decision, the Colts have been set up for a virtual no-win situation. If Baltimore obtains a court order requiring the Colts to play other than in Indianapolis, the court issuing that order cannot guarantee that the CIB will not obtain a contrary order. No court in which the CIB obtained an order requiring the Colts to specifically perform the CIB Agreement could prevent the enforcement of a conflicting order by Baltimore. Thus, the Colts would be forced to disobey at least one of the conflicting orders.

Congress has provided a remedy for such a conflict in interpleader, but the Court of Appeals would deny the Colts that remedy, forcing an irreconcilable dilemma. As observed by Professor Hazard, such a conflict without hope of resolution has profound consequences:

> This is not only a grave matter, it is a subversion of the very basis of the legal order. It is intolerable that a legal system should come down at the point of application to tell someone that he has orders such that he cannot help but disobey. It is subversive of the legal order that this be done, for a social order that is not a police state requires general voluntary obedience to the rules and this in turn requires general, and certainly official, assent that the rules are to be taken seriously as binding obligations. It is impossible for them so to be taken if the only sensible response to official command is to laugh or cry or to fight or lie down.[14]

[14] Hazard, Jr. & Moskovitz, *supra* note 4, at 752 (footnotes omitted).

Such a result cannot, and should not, be tolerated. The decision of the Court of Appeals is seriously in error and deserves review by this Court.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that a Writ of Certiorari issue.

Respectfully submitted,

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APPENDIX

APPENDIX

OPINIONS AND ORDERS BELOW

In the

United States Court of Appeals

For the Seventh Circuit

No. 84-1649

INDIANAPOLIS COLTS,

Plaintiff-Appellee,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE,

Defendants-Appellants,

and

CAPITAL IMPROVEMENT BOARD OF MANAGERS OF MARION COUNTY,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. 84 C 652—William E. Steckler, *Judge.*

ARGUED JULY 10, 1984—DECIDED AUGUST 10, 1984

Before BAUER, POSNER, and COFFEY, *Circuit Judges.*

BAUER, *Circuit Judge.* Defendants Mayor and City Council of Baltimore (collectively "Baltimore") appeal from two district court orders entered in this interpleader action Plaintiff Indianapolis Colts filed pursuant to 28 U.S.C. § 1335 (1948). The Colts, a football team owning a National Football League franchise, filed the action claiming interpleader jurisdiction on the ground that Baltimore and the

Capital Improvement Board of Managers of Marion County, Indiana (CIB), operators of the Indianapolis Hoosier Dome, had conflicting claims against the team. The district court in Indiana granted the Colts' request for an order restraining Baltimore from pursuing its condemnation action against the Colts, which was pending in a federal district court in Maryland. Two weeks later, the district court also enjoined Baltimore from pursuing a Maryland state court action against the NFL in which Baltimore hoped to stop the Colts from moving to Indianapolis. Baltimore filed a notice of appeal from the court's two orders on April 19, 1984. On April 23, Baltimore also filed in this court an emergency motion to stay the district court orders and to enjoin the Colts from preparing to play football in Indianapolis pending this appeal. On May 8, this court granted Baltimore's motion for a stay, but denied Baltimore's request for an injunction against the Colts. *Indianapolis Colts v. Mayor of Baltimore*, 733 F.2d 484 (7th Cir. 1984). Our jurisdiction is based on 28 U.S.C. § 1292(a)(1) (1982). We hold that the district court did not have interpleader jurisdiction to hear this suit, and therefore vacate the orders and remand with instructions to dismiss.

I

Through the 1983 season, the Colts played their home games in Baltimore Memorial Stadium. In February 1984, the Colts and the stadium managers began negotiating a renewal of the Memorial Stadium lease. At the same time, the Colts negotiated with the CIB regarding the possibility of moving the team to the Hoosier Dome.

On March 27, 1984, Colts owner Robert Irsay learned that the Maryland Senate passed a bill granting the City of Baltimore the power to acquire the Colts by eminent domain. Irsay decided to move the team to Indianapolis and promptly executed a lease with the CIB. The Colts fled Baltimore under the cloak of darkness; eight moving vans full of Colts equipment arrived in Indianapolis on March 29.

On March 29, Maryland's governor signed into law the bill authorizing Baltimore to acquire the Colts by condemnation. Baltimore filed a condemnation petition against the Colts on March 30 in Maryland state court. The state court restrained the Colts from transferring any element of the team from Baltimore.

After learning about the condemnation suit by telegram, the Colts took two actions. First, on April 2, the Colts caused removal of the state court condemnation proceeding to federal district court in Maryland. Second, on April 5, the Colts filed this action in the United States District Court for the Southern District of Indiana, claiming that their obligations under the lease with the CIB conflicted with Baltimore's attempts to acquire the team through eminent domain.

II

Our review of this case extends to the question of whether the interpleader was proper. *Allstate Insurance Co. v. McNeill*, 382 F.2d 84 (4th Cir. 1967), *cert. denied*, 392 U.S. 931 (1968). This question is an issue of law entitled to full appellate review.

We hold that the Colts have not successfully satisfied the pleading requirements of 28 U.S.C. § 1335. Despite the Colts' argument that it is unfair for the City of Indianapolis to lose the team by another city's condemnation suit, we find that the CIB and Baltimore do not have conflicting claims over a single stake. Additionally, even assuming the CIB and Baltimore have claims over the same stake, the Colts do not face a reasonable danger of multiple liability or vexatious, conflicting claims from the claimants, and thus interpleader is not justified here.

A

A basic jurisdictional requirement of statutory interpleader is that there be adverse claimants to a particular fund. *See Libby, McNeill & Libby v. City National*

Bank, 592 F.2d 504 (9th Cir. 1978). The CIB and Baltimore are not claimants to the same stake. Baltimore seeks ownership of the Colts franchise, whereas the CIB has no claim to ownership of the franchise. Instead, the CIB has a lease with the Colts that requires the team to play its games in the Hoosier Dome and imposes other obligations to ensure the success of the enterprise.

The Colts argue in part that clause 11 of their lease with the CIB raises an interest in the CIB which conflicts with Baltimore's attempt to obtain the franchise. Clause 11 grants the CIB the first chance to find purchasers for the team if Irsay decides to sell his controlling interest. This right of first refusal is the CIB's contractual guarantee either that Irsay always will control the team or that the CIB will have the right to choose his successor. Yet this provision does not give the CIB a present right to buy the Colts, and thus does not raise a claim against the franchise conflicting with Baltimore's claim.[1]

A successful eminent domain action obviously will defeat the CIB's interests in keeping the Colts in Indianapolis. Nevertheless, interpleader is not designed to aid every

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[1] Other interests might constitute a claim conflicting with the eminent domain action. For example, if the CIB had signed a contract to purchase the Colts, the CIB might have had rights as equitable owner which would conflict with Baltimore's claim. The right of first refusal and the contractual obligations of the Colts, however, do not raise such a conflict.

This case is analogous to the situation where the owner of a commercial building leases the entire building to a company for ten years and then in the middle of that lease suddenly faces a condemnation proceeding by the city. Even assuming the existence of all other jurisdictional prerequisites, the company can assert no conflicting claim to justify interpleader. The company may have a claim against the owner. The company may also have a claim against the city for damages. But the company has no claim to ownership of the building conflicting with the city's claim of eminent domain. The CIB-Colts lease indicates clearly that the CIB has no claim.

plaintiff confronted by one claim which, if successful, would defeat a second claim because the plaintiff has lost the ability to pay damages. Such an interpretation would twist interpleader into protection for defendants from losing the opportunity to recover damages because the plaintiff's resources already have been depleted. Interpleader is warranted only to protect the plaintiff-stakeholder from conflicting liability to the stake.

Interpleader is proper in cases such as a surety confronted by claims of subcontractors and materialmen which exceed the surety's contractual liability, conflicting claims of entitlement to the proceeds of a life insurance policy, or automobile insurers surrendering the maximum sum of their liability to the court for disposition to plaintiffs in an accident case. The issue of whether the interpleaded defendants' claims are adverse does not arise often. The Colts' argument here that the "bottom line" of this case is which city "gets" the Colts clouds the issue of adversity. Only reasonable legal claims can form the adversity to the plaintiff necessary to justify interpleader. The CIB has no reasonable legal claim to ownership of the franchise sought by Baltimore. For the Colts, losing their franchise to Baltimore may lead to breach of the lease claims by the CIB, but this is not a situation for which interpleader was designed.[2] *See Texas v. Florida*, 306 U.S. 398, 405-08 (1939); *Indianapolis Colts*, 733 F.2d at 487.

B

Interpleader is a suit in equity. *See Champlin Petroleum Co. v. Ingram*, 560 F.2d 994 (10th Cir. 1977), *cert. denied*, 436 U.S. 958 (1978); *see also First National Bank v. United States*, 633 F.2d 1168 (5th Cir. 1981); *United States v. Major Oil Corp.*, 583 F.2d 1152 (10th Cir.

[2] In Part II-B, we discuss how the CIB in the lease relinquished any claim over the Colts in the event of a successful eminent domain action.

1978). Because the sole basis for equitable relief to the stakeholder is the danger of exposure to double liability or the vexation of conflicting claims, *Texas v. Florida*, 306 U.S. at 406, the stakeholder must have a real and reasonable fear of double liability or vexatious, conflicting claims to justify interpleader. *Fonseca v. Regan*, 734 F.2d 944 (2d Cir. 1984); *Bass v. Federal Savings & Loan Insurance Corp.*, 698 F.2d 328 (7th Cir. 1983); *Dunbar v. United States*, 502 F.2d 506 (5th Cir. 1974); *General Electric Credit Corp. v. Grubbs*, 447 F.2d 286 (5th Cir. 1971), *rev'd on other grounds*, 405 U.S. 699 (1972); *Fulton v. Kaiser Steel Corp.*, 397 F.2d 580 (5th Cir. 1968); *Francis I. du-Pont & Co. v. O'Keefe*, 365 F.2d 141 (7th Cir. 1966); *Bierman v. Marcus*, 246 F.2d 200 (3d Cir. 1957), *cert. denied*, 356 U.S. 933 (1958); *New York Life Insurance Co. v. Lee*, 232 F.2d 811 (9th Cir. 1956); *John Hancock Mutual Life Insurance Co. v. Beardslee*, 216 F.2d 457 (7th Cir. 1954), *cert. denied*, 348 U.S. 964 (1955); *American Fidelity Fire Insurance Co. v. Construcciones Werl, Inc.*, 407 F. Supp. 164 (D.V.I. 1975). Even assuming that Baltimore and the CIB are fighting over the same stake, the Colts do not have a reasonable fear of double liability or vexatious claims here. The Colts and the CIB foresaw the likelihood of legal obstacles to prevent the Colts from leaving Baltimore, among which was an eminent domain action. The Colts and the CIB thus specifically contracted that the lease obligations will terminate at the Colts' option if the Colts' franchise is acquired by eminent domain. Clause 21.6 of the lease states in part:

> 21.6 *Club's Option.*
>
> 21.6(a) *Actions.* The parties acknowledge and recognize that at the present time there are pending various lawsuits in the state and federal courts dealing with the issues of the provisions of the Constitution and By-Laws of the League, the Constitution of the United States, and various State Constitutions, state and federal antitrust laws, and state and federal laws of eminent domain and other state and federal laws which may be impact on the provisions of this Agreement. In acknowledgement and contemplation

> of those lawsuits and of the fact: that certain parties may institute lawsuits of a similar or dissimilar nature, including without limitation those described in the preceding sentence and those seeking injunctive relief to prevent the Club from keeping, observing and/or performing any of this Agreement or keeping, observing or performing any other covenant, agreement or undertaking; or, a strike suit is filed by any person; or, there is any act or action of the League, be it the institution of a suit, disciplinary or other proceedings, or threatening termination or suspension of the Franchise or of a fine as a result of or related to the Club's transfer of its Franchise or the playing of its home games in Indianapolis; or, an eminent domain suit is filed by any governmental authority or any other statutory body capable of instituting said suits, the parties agree that:
>
> * * *
>
> (iii) If Club is ordered by a final order of such court of final appellate jurisdiction to play other than at the Stadium or the Franchise is acquired by eminent domain, this Agreement shall terminate at Club's option, and the parties shall have no further obligations hereunder except as stated in this Paragraph [dealing with a few final financial affairs].

This "escape" clause renders unreasonable the Colts' claim that they will face a second suit over the same stake if Baltimore ultimately succeeds in its eminent domain action.[3] The Colts' characterization of the CIB's claim does not meet a "minimal threshold level of substantiality." 7 C. Wright & A. Miller, Federal Practice and Procedure § 1704, 370-71 (1972); *Frances I. duPont & Co.*, 365 F.2d at 143 (cited in Wright & Miller).

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[3] We are expressing here not an opinion on the likelihood of success of any action by the CIB, but rather the fact that the CIB plainly relinquished any claim to recover against the Colts for a loss due to a successful eminent domain action.

The distinction in this case between the lack of adverse claims and the lack of fear of double liability or vexatious litigation is slight. Other courts, however, have recognized that even if adverse claims exist in theory, still there may be no real fear of multiple lawsuits. In *Bierman*, 246 F.2d 200, for example, the plaintiffs sought interpleader to resolve claims over a specific sum of money. One claimant asserted a valid claim. The other supposed claimant, however, was a corporation controlled by the plaintiffs. The Third Circuit ruled that the plaintiffs knew that the corporation would make no claim against the money and thus no equitable consideration supported interpleader jurisdiction. *Id.* at 203-04. In another case, the plaintiff stock brokerage sought to interplead the administrator of the estate to which the plaintiff owed the stake and all the legatees named in the decedent's will. *O'Keefe*, 365 F.2d 141. This circuit ruled that the district court correctly determined that only the administrator would claim the stake, and thus interpleader did not lie. *Id.* at 143.

Because the Colts cannot assert a reasonable fear of multiple liability or vexatious, conflicting claims, interpleader jurisdiction was not proper. There is no other basis for federal jurisdiction in the federal district court in Indiana to hear the Colts' action and thus this suit must be dismissed.

III

Because we find that Baltimore and the CIB do not have adverse claims and that the Colts are not exposed to the risk of vexatious litigation, we need not address the merits of Baltimore's other arguments against the maintenance of interpleader jurisdiction. Specifically, we decline to decide whether the Colts and the CIB contrived a conflicting claim by signing the lease in order to create jurisdiction in a more favorable forum. Even if that was their plan, it did not succeed. The forum-shopping issue thus is not relevant to our disposition of the case.

The district court's orders are vacated and this action is remanded with instructions that it be dismissed. Each party shall bear its own costs of this appeal.

VACATED AND REMANDED
WITH INSTRUCTIONS.

COFFEY, *Circuit Judge*,, dissenting. The issue in this case is whether the Capital Improvement Board ("CIB") and the City Council of Baltimore ("Baltimore") are adverse claimants to a particular stake held by the Indianapolis Colts. The majority asserts that the CIB and Baltimore "are not claimants to the same stake" and thus the Indianapolis Colts fail to satisfy the jurisdictional requirement of 28 U.S.C. § 1335 (1982). In the alternative, the majority declares that even if a common stake does exist, the Colts are not presented with conflicting and vexatious claims to that stake. I dissent from the majority's strained attempt to simplify this case as merely involving an eminent domain proceeding in Baltimore, Maryland, and a lease agreement in Indianapolis, Indiana. Rather, as characterized by the district court judge, this action involves a struggle over a very unique stake—"the rights and privileges of the [Colts] franchise and the property rights incident to the operation thereof"—with all of the attending social and economic benefits to be derived by two major metropolitan cities competing for the rights and privileges of the Colts' National Football League franchise. The district court entered an extensive list of findings of fact to support its characterization of the stake. The majority completely ignores these findings and summarily declares that "the CIB and Baltimore do not have conflicting claims over a single stake." Based upon the district court's extensive findings of fact, I am convinced that the CIB and the City of Baltimore are adverse claimants to the same stake and thus the Colts satisfy the jurisdictional requirement of 28 U.S.C. § 1335.

According to the district court's findings of fact, on March 28, 1984, the Colts signed a Lease Agreement ("Lease") with the CIB, owner of the Hoosier Dome. Pursuant to the terms of that Lease, the Colts are obligated for a twenty-year period to, *inter alia*, play their preseason and regular season home football games at the Hoosier Dome and reimburse the CIB for expenses incurred in season ticket distributions. On March 30, 1984, the Baltimore City Council commenced an eminent domain proceeding against the Colts in Maryland state court. The court entered a restraining order enjoining the Colts from *inter alia*:

> "[t]aking any action or inaction for the purpose or the effect of selling, removing, transferring, emcumbering or otherwise affecting the franchise and contract rights related thereto which is being condemned in these proceedings."

That same day, March 30, 1984, the Colts' executives received a telegram from the City of Baltimore notifying them that the City had commenced an eminent domain proceeding in Maryland state court and had obtained a restraining order. The following day, March 31, 1984, the CIB ratified the Lease previously signed on March 28, 1984. The district court found that because of the sketchy information provided in the telegram, "[b]etween March 30, when the telegram was received, and April 2, the earliest date that the written copy of the First Restraining Order might have been received [the Colts] did not take any action which violated the First Restraining Order as summarized in the telegram."

On April 5, 1984, the CIB sent a letter to the Colts demanding that the Colts fulfill their contractual obligations under the Lease. That same day, the Colts filed a statutory interpleader under 28 U.S.C. § 1335 in the United States District Court for the Southern District of Indiana. The Colts alleged that the Baltimore City Council:

"seeks to require [the] Colts to operate the Franchise in Baltimore and to continue in existence the Baltimore Lease, and . . . to preclude [the] Colts from operating the Franchise in conformance with the [CIB] Agreement . . . ."

The Colts further alleged that the CIB:

"has imposed and will continue to impose contractual obligations upon [the] Colts requiring that [the] Colts retain ownership and control of the franchise and play home games in Indianapolis . . . ."

The district court conducted an evidentiary hearing and, based upon the evidence presented at that hearing, made findings of facts, entered conclusions of law, and determined that the Colts "demonstrated sufficient adverse claims, or potential adverse claims, between Baltimore and the CIB to confer interpleader jurisdiction on this Court pursuant to 28 U.S.C. § 1335." The majority disagrees.

The Federal interpleader statute, 28 U.S.C. § 1335, provides that:

"(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more . . . if

(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property . . . and if (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court

* * *

(b) *Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.*"

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(Emphasis added). The Federal interpleader statute is to be liberally construed in order to protect the stakeholder from both the expense and risk of double litigation. *See, State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 533 (1967); *Union Central Life Ins. Co. v. Hamilton Steel Prod., Inc.*, 448 F.2d 501, 504 (7th Cir. 1971). Indeed, in this circuit "so long as there exists a 'real and reasonable fear of exposure to double liability or the vexation of conflicting claims . . . , jurisdiction in interpleader is not dependent upon the merits of the claims of the parties interpleaded . . . ." *Union Central Life Ins. Co. v. Hamilton Steel Prod., Inc.*, 448 F.2d at 504 (quoting *Bierman v. Marcus*, 246 F.2d 200, 202 (3d Cir. 1957), *cert. denied*, 356 U.S. 933 (1958). Moreover, the "stake" may consist of intangible property rights. *Cf. United States v. American Film Institute*, 79 F.R.D. 374, 376 (D.C.D.C. 1978) ("rights of access and use possessed by the . . . defendants to certin film materials.").

The claim asserted by the CIB is not, as the majority contends, a simple contract interest, rather it involves the rights, benefits, and privileges of a National Football League franchise formerly known as the Baltimore Colts. It is this intangible, but very unique, property right that the CIB seeks to control by enforcing the terms of its Lease. A realistic view of the facts at hand reveals that the CIB was organized to improve and expand the greater Indianapolis economic market. As a result, the CIB provided in its Lease with the Colts:

> "WHEREAS, the Board believes that the State of Indiana, County of Marion, City of Indianapolis and the Board will derive substantial economic, financial, and public relations, community and other benefits as a result of the Club's relocating the franchise to the Indianapolis area."

The CIB's interest in enforcing the Lease is not simply to turn a profit for the Hoosier Dome but to enhance the prestige and the economic climate of the City of Indianapolis and the County of Marion, Indiana with a coveted

National Football League franchise. *See, e.g., Indianapolis Star*, April 20, 1984, at 6, col. 3 ("stadium lease . . . is expected to bring the city $2.6 million in new revenues a year"). There are numerous social and economic benefits associated with a professional sports franchise including public entertainment, increased restaurant and hotel revenues, civic pride, favorable media coverage, increased retail expenditures, and national recognition. This point is clearly driven home by Baltimore's all-out efforts to keep the Colts in Baltimore.

The fact that the City of Indianapolis does not own the Colts and the CIB has only entered into a contract with the present owners of the franchise is of no consequence. As the California Supreme Court acknowledged in *City of Oakland v. Oakland Raiders*, 32 Cal.3d 60, 646 P.2d 835, 183 Cal.Rptr. 673 (1982), there may be no substantial legal difference between "managing and owning the facility in which the game is played, and managing and owning the team which plays in the facility." 32 Cal.3d at 73, 646 P.2d at 842, 183 Cal.Rptr. at 680. *See also, Los Angeles Memorial Coliseum Com'n v. N.F.L.*, 726 F.2d 1381, 1397 (1984). The Lease in this case expressly provides the CIB with a right of first refusal allowing it to find a suitable purchaser for the franchise if the owner of the Colts, Robert Irsay, disposes of a majority of the stock of the Colts' franchise. The full intent of the CIB as embodied in the Lease is to keep the Colts in Indianapolis and thereby enjoy the rights and privileges of a National Football League franchise. The City of Baltimore also clearly desires these very same rights and privileges and thus, contrary to the majority's simplified analysis, there does exist in this case a common, identifiable stake—the rights and privileges of the Colts' franchise—subject to adverse claims.

The majority asserts that even if there is a common, identifiable stake, the claims of the CIB and Baltimore are not adverse and vexatious. The majority supports its position with reference to section 21.6(a)(iii) of the Lease which provides:

> "If Club is ordered by a final order of such court of final appellate jurisdiction to play other than at the Stadium or the Franchise is acquired by eminent domain, this Agreement shall terminate at Club's option, and the parties shall have no further obligations hereunder . . . ."

According to the majority, this " 'escape' clause renders unreasonable the Colts' claim that they will face a second lawsuit over the same stake if Baltimore ultimately succeeds in its eminent domain action." The majority erroneously assumes that nothing will prevent the Colts from performing their obligations under the Lease except the successful eminent domain proceeding by Baltimore. The majority completely overlooks the fact that the Colts may be prevented from performing their obligations under the Lease before a final unappealable order of eminent domain is entered.

The Lease clearly provides that the Colts may terminate the Lease only if a *final order of a court of final appellate jurisdiction* is issued allowing Baltimore to acquire the Colts by eminent domain. The record reveals that in the eminent domain proceeding of April 5, 1984, the Maryland state court issued a restraining order enjoining the Colts from "selling, removing, transferring, encumbering or otherwise affecting the franchise and contractual rights related thereto which is being condemned in these proceedings." It is probable, indeed likely, that during the course of an eminent domain proceeding in the Maryland district court, Baltimore will again seek to enjoin the Colts from playing any games in Indianapolis to prevent the Colts from becoming further entrenched in the Indianapolis market. There is absolutely nothing in the record before this court to suggest that a new injunction similar to the one previously issued by the Maryland state court will not be entered when the Colts' interpleader action is dismissed. Such an injunction would prevent the Colts from preparing for the upcoming season and preclude the franchise from fulfilling its obligation to play all pre-season and home games in the Indianapolis Hoosier Dome. The

Colts' hands would be tied under the terms of the contract for they would not be able to terminate the Lease because no final unappealable order of eminent domain would have been entered. Thus, the CIB would be fully justified in suing the Colts for breach of their contractual duties. The Colts would unnecessarily be presented with simultaneous, adverse, and vexatious claims from both the CIB and the Baltimore City Council.

The City of Baltimore has fought, and will continue to fight, as is its right, the CIB's interest in the Colts. Thus, the above scenario is certainly sufficient to satisfy the language of 28 U.S.C. § 1335 that two adverse claimants "may claim to be entitled" to the same stake. *See, e.g., State Farm Fire & Cas. Co. v. Tashire,* 386 U.S. at 534; *United States v. Major Oil Corp.,* 583 F.2d 1152, 1157 (10th Cir. 1978). In light of the liberal construction to be accorded the Federal interpleader statute to protect the stakeholder from the expense and risk of double litigation, I am convinced that the Colts satisfy the jurisdictional requirement of 28 U.S.C. § 1335.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

Opinion by Judge Bauer
Judge Coffey dissenting

JUDGMENT — ORAL ARGUMENT

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

August 10, 1984.

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
HON. RICHARD D. POSNER, *Circuit Judge*
HON. JOHN L. COFFEY, *Circuit Judge*

No. 84-1649

INDIANAPOLIS COLTS, *Plaintiff-Appellee,* v. MAYOR AND CITY COUNCIL OF BALTIMORE, *Defendants-Appellants,* and CAPITAL IMPROVEMENT BOARD OF MANAGERS OF MARION COUNTY, *Defendant-Appellee.*	) Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division) No. 84 C 652) WILLIAM E. STECKLER, *Judge*

This cause was heard on the record from the United States District Court for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the orders of the said District Court in this cause appealed from be, and the same are hereby, VACATED, and the cause is REMANDED with instructions to dismiss, with each party to bear its own costs on appeal, in accordance with the opinion of this Court filed this date.

In the

United States Court of Appeals

For the Seventh Circuit

No. 84-1649

INDIANAPOLIS COLTS,

Plaintiff-Appellee,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE,

Defendant-Appellant,

and

CAPITAL IMPROVEMENT BOARD OF MANAGERS OF MARION COUNTY,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. IP 84-652-C—**William E. Steckler**, *Judge.*

SUBMITTED MAY 4, 1984—DECIDED MAY 8, 1984

Before CUMMINGS, *Chief Judge*, ESCHBACH and POSNER, *Circuit Judges.*

POSNER, *Circuit Judge.* The suit in the district court arises from the efforts of Baltimore Football Club, Inc., the owner of the Baltimore Colts professional football team, to move the team from Baltimore to Indianapolis. One of the defendants, the Mayor and City Council of Baltimore (City of Baltimore, for short), has filed a motion asking us for the following relief pending

the hearing of its appeal under 28 U.S.C § 1292(a)(1): to stay the injunction that the district court granted against its pursuing a condemnation action in Maryland against the Club, and to grant an injunction to prevent the Indianapolis Colts (as they are now called) from selling tickets or making any other preparations for playing football in Indianapolis. The City's motion raises an important issue regarding the scope of the federal statutory interpleader jurisdiction, 28 U.S.C. § 1335.

On March 28 of this year, the Baltimore Football Club signed a 20-year lease with the Capital Improvement Board of Managers of Marion County, Indiana (where Indianapolis is located) to play the Colts' home games in Indianapolis's "Hoosier Dome." That night the Club surreptitiously removed its athletic equipment and office supplies to Indianapolis. Two days later the City of Baltimore filed in a Maryland state court an action to acquire the Colts from the Club by eminent domain. The next day the Capital Improvement Board formally approved the lease that had been signed on March 28; and a week later the Club filed the present suit, an interpleader action in federal district court in Indianapolis, claiming that it was caught between the conflicting claims to the franchise asserted by the Capital Improvement Board on the one hand and the City of Baltimore on the other. The Club asked the district court to enjoin the City from proceeding with its eminent-domain suit, which meanwhile had been removed from Maryland state court to federal district court on the Club's petition. The district court granted the injunction and the City has appealed, asking, as we have said, that pending its appeal the injunction be stayed and the Colts be enjoined from taking any preparatory steps toward playing football this season in Indianapolis.

In considering the City of Baltimore's requests, we must consider the relative hardships to the parties of the relief sought, in light of the probable outcome of the appeal. *Adams v. Walker*, 488 F.2d 1064 (7th Cir. 1973). Therefore, if the City of Baltimore both has a good chance of winning the appeal and would be hurt more by the in-

junction that the district court issued than the Colts would be hurt by a stay of the injunction pending appeal, we should grant the stay. And that, as a matter of fact, describes the situation as we see it. The City of Baltimore has an excellent chance of prevailing on at least one of the grounds of its appeal, which is that this case is not within the federal courts' interpleader jurisdiction; and it is more likely to be hurt seriously by the injunction that the district court issued than the Colts are likely to be hurt seriously by a stay of that injunction.

The historical and still the primary purpose of interpleader is to enable a neutral stakeholder, usually an insurance company or a bank, to shield itself from liability for paying over the stake to the wrong party. This is done by forcing all the claimants to litigate their claims in a single action brought by the stakeholder. See 7 Wright & Miller, Federal Practice and Procedure § 1701 (1972). By expanding interpleader jurisdiction to actions "in the nature of interpleader," 28 U.S.C. § 1335(a), the federal interpleader statute has relaxed the requirement that the stakeholder be neutral and that the conflicting claims have the same origin. But it is still necessary to decide "whether the stakeholder legitimately fears multiple vexation directed against a single fund." 7 Wright & Miller, *supra*, § 1704, at p. 369. It was not a purpose of the statute that interpleader be used for forum shopping, which is the use to which it seems to have been put here; and when an interpleader action is brought in bad faith it must be dismissed. See, e.g., *Kelly v. Raese*, 377 F.2d 263 (4th Cir. 1967); cf. *New York Life Ins. Co. v. Connecticut Development Authority*, 700 F.2d 91, 96 (2d Cir. 1983).

Although the lease with the Capital Improvement Board that is the source of the Board's claim against the Colts was signed a couple of days before the City of Baltimore brought the condemnation suit, the parties to the lease were well aware that the suit (which had been expressly authorized by the Maryland legislature) was in the works; for the lease refers to pending and prospective litigation

involving the team and gives the Club a right to get out of the lease on the basis of such litigation. This escape hatch makes it highly doubtful that the Club does in fact face inconsistent obligations, a prerequisite to interpleader jurisdiction. But if it does, then it does by virtue of its own actions; it deliberately created the situation in which it had, or appeared to have, potentially conflicting obligations depending on the outcome of the eminent-domain suit. By signing the lease when it did, the Club evidently was trying to set the stage for filing an interpleader action in Indianapolis so that it could sue the City there without having to get personal jurisdiction over it in Indiana. See *Kent v. Northern California Regional Office of American Friends Service Comm.*, 497 F.2d 1325, 1328 (9th Cir. 1974). Assuming there was diversity of citizenship between the Club and the City of Baltimore (the Club is incorporated in Delaware, and alleges that it shifted its principal place of business from Baltimore just before the City filed its eminent-domain action—an allegation challenged by the City in the action that has been removed to federal district court in Maryland, but unnecessary to resolve here), the Club could not get personal jurisdiction over the City in Indiana, and therefore could not have brought the present suit without relying on the federal interpleader statute, which provides for nationwide service of process. (The required diversity to maintain the interpleader action, see 28 U.S.C. § 1335(a)(1), is diversity between the claimants, the City of Baltimore and the Capital Improvement Board, see *State Farm Fire & Casualty Co. v. Tashire*, 386 U.S. 523, 530-31 (1967); *New York Life Ins. Co. v. Connecticut Development Authority, supra*, 700 F.2d at 95 n. 5, and they are diverse.) Anyway the Club appears to have no claim against the City on which a suit of any sort could be founded; it merely wants a stay of the City's eminent-domain suit. It could ask the court in Maryland where the suit is pending for such a stay, of course, but evidently it thinks its request will be more favorably received in Indiana. But it has to get into court in Indiana, and it

can do that only by way of the interpleader jurisdiction. We cannot imagine any other motive for this action.

The Colts are in that exceptionally common situation where their ability to perform a contract may be imperiled by a lawsuit; and they just want to shift the lawsuit to their new home ground, by using the interpleader statute to get personal jurisdiction of the plaintiff there, which they could not otherwise get. This is not what the statute was intended for. See *Kelly v. Raese, supra,* where an interpleader action was dismissed because the court found that the purpose was not to avoid multiple liability but to take advantage of the nationwide service of process provision in the interpleader statute.

The Colts did not file this action until after they had removed the City of Baltimore's eminent-domain suit to federal district court in Maryland. So they have a federal forum in which to litigate *that* dispute, and they have no dispute with the Capital Improvement Board. At least they have such a forum unless the Maryland district court holds that the Club was actually a citizen of Maryland when the suit was brought; but if the Club is not of different citizenship from the City, it is not entitled to get into federal court on the basis of the diversity of citizenship between the City and the Capital Improvement Board of Marion County unless the Club has a genuine interpleader action. The fact that the Club filed the present suit and moved to enjoin the City of Baltimore from proceeding with the action in Maryland indicates that, now that the Club has relocated to Indianapolis, it would prefer to proceed in a federal district court there than in Baltimore. But it was not to foster forum shopping that the interpleader jurisdiction, with its unusual feature of nationwide service of process that forces defendants to defend in jurisdictions where they could not otherwise be sued, was created.

If this is a proper interpleader action, we foresee immense expansion in the use of the device. A company is sued for violating the antitrust laws, and treble damages

are sought. If the company loses the suit, its assets may not be sufficient to enable it to pay off a bond indenture. It would rather litigate the antitrust suit in its home court, and it therefore interpleads its bondholders and the antitrust plaintiff. This would not be a proper invocation of the interpleader jurisdiction and no more is the present case.

Another way to state our objection to the maintenance of this case under the interpleader statute is that there is no stake, even assuming that the lease created, in good faith, an unconditional obligation in the Club. The problem is not that there is no fund in a conventional sense; the stake can be a thing as well as a sum of money—can even, we may assume, be an athletic team. But while the City of Baltimore is indeed asserting a right to take over the team through the eminent-domain power, the Capital Improvement Board is not. It is just a lessor of a stadium. It did not buy the Colts by signing a lease that obligates the Colts to play all their home games in the Board's stadium for 20 years, or for that matter 2000 years. If the Colts' owner breaks the lease, the Board may be able to get damages for breach of contract; it will not be able to take over the football team. It is not a mortgagee to whom the team has been pledged as collateral, or the assignee of the team's owner. See *General Atomic Co. v. Duke Power Co.*, 553 F.2d 53, 57 (10th Cir. 1977).

Nevertheless we need not, in advance of hearing the City's appeal, conclude definitively that this suit was brought in bad faith and should be dismissed. It is enough for present purposes that such a conclusion seems quite likely on the basis of the voluminous briefing papers that have been filed with us in support of and opposition to the City's motion. It is also quite likely that the City will be seriously harmed by not being able to proceed with its eminent-domain action in Baltimore. The attempt to acquire a football team by eminent domain is unusual, to say the least; we do not suggest it will or should succeed. But every day that passes with the Colts ensconced in Indianapolis makes it less likely that the City

of Baltimore, even if it won its eminent-domain suit, could actually reconstitute the Baltimore Colts. And no irreparable harm would accrue to the Colts just from having to defend the suit in Maryland.

The balance of hardships would be much closer if we were to grant the City of Baltimore's second request, which is for an order enjoining the Colts from preparing to play football in Indianapolis until this appeal is heard. Such an order, if granted, would wreck the Colts' upcoming football season, imposing immense financial losses on owners and players alike. But if the interpleader suit was improper, we cannot see what basis the City of Baltimore has for asking us to keep the Colts from playing football in Indianapolis. Such relief is not a proper incident to a suit that should not have been brought. It is properly ancillary to the suit in Maryland, about which we know no more than what we have said in this opinion. If the City of Baltimore wants to bring an ancillary proceeding of some kind in Indiana to protect its right to get an effective remedy in its eminent-domain suit in Baltimore, it is free to do so (of course, we shall not prejudge the success of any such effort). But this is not that suit.

The stay of the injunction granted by the district court against the City of Baltimore's proceeding with its suit in Maryland is GRANTED. The other relief requested by the City is DENIED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANAPOLIS COLTS	)	
	)	
v.	)	IP 84-652-C
	)	
MAYOR AND CITY COUNCIL OF BALTIMORE and CAPITAL IMPROVEMENT BOARD OF MANAGERS OF MARION COUNTY	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter originally came before the Court for hearing on Plaintiff's Petition for a Supplemental Restraining Order. Prior to the hearing the defendant Mayor and City Council of Baltimore filed with the Court its Motion to Dismiss Complaint, Dissolve Restraining Order, Impose Sanctions, and For Other Relief and its Motion for Preliminary Injunction.

The hearing was held on April 18-19, 1984. While both the plaintiff and the defendant Capital Improvements Board of Managers of Marion County ("CIB") attempted to confine the issues at the hearing to the narrow questions raised by the Petition for Supplemental Restraining Order, Defendant Mayor and City Council of Baltimore was allowed at its urging to undertake extensive cross-examination and introduce evidence itself on many of the issues advanced in these other motions before the Court and urged the Court to rule on those issues in the context of its ruling on the Petition for Supplemental Restraining Order. While much of the evidence profferred by defendant Baltimore was allowed to go into the record at defendant's

urging and over plaintiff's and defendant CIB's objection, the Court allowed the evidence to be introduced as it might relate to the defense of unclean hands which had been raised by defendant Baltimore, not as it might relate to the issue of ownership of the res to be resolved in the second phase of these proceedings. Immediately prior to the hearing, the Court also received a Suggestion of Stay in Bankruptcy filed on behalf of Robert W. McMahon, Sr., who is not a party to these proceedings.

At the conclusion of the hearing the Court announced that it found sufficient adverse claims, or potential adverse claims, existed to support plaintiff's interpleader action. By that finding the Court found that it was vested with subject matter jurisdiction. The Court also found that by reason of the conflicting adverse claims to the res, the Court had in personam jursidiction over the defendants asserting an interest in, or claim to, the res here in issue, *i.e.*, the rights and privileges of the Franchise and the property rights incident thereto.

After carefully considering the evidence and the briefs and oral argument of counsel, the Court makes the following findings of fact and conclusions of law.

Findings of Fact

1. This case involves a dispute over a professional football team.

The Parties.

2. Indianapolis Colts is the trade name of Baltimore Football Club, Inc., a corporation and the plaintiff herein, which owns and operates a professional football team. As a part of this operation, plaintiff owns a franchise (the "Franchise") from the National Football League (the "NFL").[1] Michael Chernoff ("Chernoff") is a vice-president of plaintiff.

[1] Transcript of Proceedings at p. 1-19 (hereinafter cited as "Tr. at p. ___").

3. Defendant Mayor and City Council of Baltimore ("Baltimore"), is a muncipal corporation of the State of Maryland.

4. The CIB is a governmental entity and is the operational unit of Marion County, Indiana, for the construction and operation of a capital improvement of Marion County, Indiana, which county is a municipal corporation, I.C. 36-10-9-1, *et seq.*, and I.C. 36-1-1-1, *et seq.* The CIB was created by Indiana statute effective January 1, 1966. The CIB is responsible for the operation of the Convention Center and the Hoosier Dome in Indianapolis.[2] David Frick ("Frick") is the Treasurer of the CIB, and Pershing E. MacAllister is its Chairman. William Hudnut is Mayor of the City of Indianapolis.

5. The CIB is composed of seven members, and the members of the Board in February of 1984 and at the present time are P. E. MacAllister, President; Herbert J. Backer, Vice President; George H. Maley, Secretary; David R. Frick, Jr., Treasurer; and Amanda Strong, David Orr, and James Dora, Board Members.

Plaintiff's Move to Indianapolis

6. In mid-February 1984, Chernoff, representing the plaintiff, and Frick, representing the CIB, began negotiations to move the plaintiff's Franchise and football team operations from Owings Mills, Maryland to Indianapolis.[3] The negotiations continued for approximately six (6) weeks,[4] culminating in a final negotiating session on March 27, 1984, in Skokie, Illinois.[5]

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[2] Tr. at pp. 2-106 to 2-107.

[3] Tr. at pp. 2-108, 2-5 to 2-6.

[4] Tr. at p. 2-112.

[5] Tr. at pp. 3-24 to 3-26. (The volume of the Transcript consisting of the Cross-Examination of David Frick is not labeled by volume number. In the interest of consistency, this volume will be cited herein as Volume 3 and references thereto will be cited as "Tr. at p. 3- ____".)

On the following morning, Wednesday, March 28, 1984, Michael Chernoff and Robert Irsay advised David Frick that the Baltimore Football Club, Inc. was moving its National Football League franchise from Baltimore to Indianapolis.

7. Frick received a message from his secretary on the morning of March 28, 1984, that Chernoff was attempting to reach him with an "urgent message." Frick called Chernoff, and Chernoff told him that the Club had decided to leave Baltimore and move to Indianapolis. Chernoff asked Frick for his assistance in acquiring moving vans so that the Club could move property out of its Maryland training complex that day. Chernoff said the Club wanted to move quickly because one house of the Maryland legislature had just passed a bill regarding Baltimore's power of eminent domain.[6]

8. On the morning of March 28, 1984, after Frick learned from Chernoff that the Club intended to leave Baltimore, Frick put Mayflower Corporation Chairman, John B. Smith, in immediate contact with Chernoff to work out arrangements for moving the Club's equipment. Frick had previously told Chernoff that CIB would assist in the move, and Mayflower had previously informed Frick and Mayor Hudnut that it would provide the moving service. CIB paid for the moving service.[7]

9. After talking with Chernoff on the morning of March 28, 1984, Frick had a telephone conversation with Robert Irsay, owner of the Club. Irsay and Frick discussed that the Maryland legislature was proceeding with its legislation regarding new powers for Baltimore to condemn sport franchises under eminent domain. Irsay stated that he wanted to move the Club's personal property out of its Maryland training complex that day and discussed Frick's

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[6] Tr. at pp. 2-18 to 2-19, 2-115 to 2-116; 3-32 to 3-33, 3-37 to 3-40.

[7] Tr. at pp. 2-117, 2-126.

attempts to contact Mayflower Corporation's chairman regarding the availability of vans for the move.[8]

10. Chernoff arrived in Indianapolis on the Club's private plane at approximately 1:30 p.m. on March 28, 1984. Frick and Chernoff then went to the CIB's law firm, Bingham, Summers, Welsh & Spilman, where the lease agreement was to be typed. While they were waiting for the Lease Agreement to be typed, Chernoff and Frick went to Merchants National Bank where Chernoff signed loan documents. They then returned to Bingham, Summers and signed the Agreement which Mayor Hudnut and CIB President, P. E. MacAllister, had already signed.[9]

11. In the afternoon of March 28, 1984, a document containing the substance of the negotiations between Chernoff and Frick (the "CIB Agreement") was executed on behalf of the CIB by William Hudnut, Pershing E. MacAllister, and Frick.[10] Later in the evening on March 28,

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[8] Tr. at pp. 3-40 to 3-43.

[9] Tr. at pp. 2-118 to 2-119.

[10] The course of signatures was summarized by Frick on cross-examination at Tr. pp. 3-47 to 3-48:

A I think the record will show that at the time that Mr. Chernoff and myself were in Merchants Bank, Mr. McAllister [sic] was at the Bingham Summers law firm. And the Mayor was at the Bingham Summers firm, and they both executed three or four or five sets of the lease as well as the interim lease. I did not personally see them sign that document.

Q But at some point you signed the document, yourself?

A Yes, after Mr. Chernoff completed his work at Merchants Bank, then we came back to the law firm. And it was at that point in time I executed the document. At the time I executed the document, Mr. McAllister's [sic] signature was already on the document. I am familiar with that signature. We sign a lot of documents together.

And having served with the Mayor for five years, I well knew his signature. And his signature was on the document.

Q Mr. McAllister's [sic] was?

A Both the Mayor and Mr. McAllister's [sic] signatures were on the document.

the CIB Agreement was also executed by Chernoff on behalf of plaintiff. Chernoff and Frick each retained an executed copy of the CIB Agreement.[11] Also, on March 28, 1984, all members of the CIB were verbally notified of the meeting of the CIB scheduled for March 31, 1984, by either David Frick or P. E. MacAllister. A written notice and agenda of that meeting was posted and mailed forty-eight hours before the meeting of March 31, 1984, in compliance with the Indiana Open Door Law, I.C. 5-14-1.5-1, *et seq.*

12. Approximately four (4) hours after the CIB Agreement was executed by Chernoff, plaintiff began to physically move its property, including its books and records, from Owings Mills, Maryland to Indianapolis.[12] The timing of this physical move was influenced, in some degree, by the activity of the Maryland legislature toward passage of new legislation on the subject of eminent domain.[13] Included in the property moved on March 28 was a certificate evidencing plaintiff's membership in the NFL and its ownership of the Franchise.[14] Plaintiff's property, including its books and records, is presently located in Indianapolis, and plaintiff is conducting its football team operations in Indianapolis.[15]

13. Pursuant to an ordinance dated March 30, 1984,[16] Baltimore commenced an action to condemn plaintiff's property, including the Franchise, on March 30, 1984. Late in the afternoon of March 30, 1984, Chernoff's secretary in Skokie, Illinois, received a telegram notifying plaintiff of

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[11] Tr. at pp. 3-48 to 3-49.

[12] Tr. at pp. 2-15, 2-57 to 2-58.

[13] Tr. at pp. 3-39 to 3-43.

[14] This certificate was not located in the City of Baltimore. It was moved from plaintiff's facilities in Owings Mills, Maryland directly to Indianapolis. *See* Tr. at pp. 2-5 to 2-6.

[15] Tr. at p. 1-72.

[16] *See* Baltimore's Exhibit B.

the entry of a restraining order (the "First Restraining Order") against transfer of plaintiff's property. The telegram was subsequently read over the telephone to Chernoff, who was at that time in Indianapolis.[17] The telegram did not contain the exact language of the First Restraining Order, nor did it refer to all of the terms of the First Restraining Order.[18] Plaintiff did not receive a copy of the First Restraining Order until April 2 or 3.[19] Between March 30, when the telegram was received, and April 2, the earliest date that the written copy of the First Restraining Order might have been received, plaintiff did not take any action which violated the First Restraining Order as summarized in the telegram.

14. Prior to March 30, 1984, no order directed against plaintiff was outstanding.[20] At no time was any order entered restraining the activities of the CIB. Plaintiff had completed moving its property, including its books and records, to Indianapolis prior to the commencement of Baltimore's condemnation action and the entry of the First Restraining Order.[21]

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[17] Tr. at pp. 2-32 to 2-35.

[18] The body of the telegram, introduced into evidence as Plaintiff's Exhibit 5, stated:

> "A PETITION FOR CONDEMNATION HAS BEEN FILED IN THE CIRCUIT COURT FOR BALTIMORE CITY CASE #84090060/L18657 AGAINST THE NATIONAL FOOTBALL LEAGUE FRANCHISE GRANTED TO BALTIMORE FOOTBALL CLUB, INC. AND ALL OTHER PROPERTY OWNED BY BALTIMORE FOOTBALL CLUB, INC. THE COURT HAS FURTHER ENJOINED GEOGRAPHIC TRANSFER OF OR DISPOSAL OR ENCUMBRANCE OF THE FRANCHISE AND ALL OTHER ASSETS OF BALTIMORE FOOTBALL CLUB, INC."

[19] Tr. at p. 2-32.

[20] Counsel for Baltimore conceded that no such order was outstanding on March 27. *See* Tr. at p. 3-30.

[21] *See, e.g.*, Tr. at p. 3-64.

15. On March 31, 1984, the CIB Agreement was ratified and approved by the CIB.[22]

The CIB Agreement.

16. Paragraph 3.1 of the CIB Agreement obligates the plaintiff to perform the CIB Agreement for a term of twenty (20) years.[23] Paragraph 4.1 of the CIB Agreement obligates the plaintiff to play all of its pre-season and regular season home football games commencing in 1984 and continuing during the balance of the term of the CIB Agreement at the Hoosier Dome in Indianapolis.[24] Paragraph 10.3 of the CIB Agreement obligates the plaintiff to pay the CIB for various expenses relating to day-of-game personnel.[25] Paragraph 10.4 of the CIB Agreement obligates the plaintiff to reimburse the CIB for expenses incurred in season ticket distribution.[26] Paragraph 11 of the CIB Agreement provides the CIB with certain rights to acquire the stock or the Franchise of the plaintiff in the event of an attempted transfer of such stock or Franchise.[27] Paragraph 25 of the CIB Agreement obligates the plaintiff to provide insurance and to indemnify the CIB against certain occurrences.[28] Paragraph 29 of the CIB Agreement obligates the plaintiff to do business as, operate as and be known as the "Indianapolis Colts."[29] The CIB Agreement by its terms

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[22] *See* Baltimore's Exhibit G.

[23] Tr. at p. 1-27.

[24] *Id.*

[25] Tr. at p. 1-28. These personnel include ticket sellers, ticket takers, security personnel, complimentary and press gate personnel, a press box crew, and elevator operators.

[26] Tr. at p. 1-29.

[27] Tr. at pp. 1-30 to 1-32.

[28] Tr. at pp. 1-32 to 1-33.

[29] Tr. at p. 1-34.

creates immediate rights in the CIB and obligations of the plaintiff.[30]

17. Paragraph 21.6(a)(i) of the CIB Agreement provides a notice and option procedure for the plaintiff to terminate the CIB Agreement in certain circumstances.[31] This provision of the CIB Agreement was to be operative only if injunctive or other proceedings made it physically impossible for plaintiff to move its property and operations to Indianapolis from Maryland.[32] In any event, plaintiff did not give, and the CIB did not receive, any written notice pursuant to paragraph 21.6(a)(i).[33]

18. Paragraph 21.6(a)(iii) of the CIB Agreement allows the plaintiff to terminate the CIB Agreement upon entry of a final order of a court of final appellate jurisdiction requiring plaintiff to play football games other than at the Hoosier Dome or condemning the Franchise.[34] Prior to the entry of such a final order by such a court of final appellate jurisdiction, no termination option is available to the plaintiff under paragraph 21.6(a)(iii).[35]

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[30] Tr. at pp. 2-47 to 2-48.

[31] Paragraph 21.6(a)(i) provides, in part:

> "If any of the above occur within 90 days of the date of this agreement, the Club shall give the Board notice in writing within five days after Club has notice of the occurrence thereof. Club shall then have a 30-day period ("preliminary decision period") within which to notify Board of its preliminary decision as to whether it will transfer the franchise and play its home games at the Stadium."

Tr. at p. 1-63.

[32] Tr. at pp. 1-68 to 1-71.

[33] Tr. at pp. 2-62, 2-133 to 2-134.

[34] Paragraph 21.6(a)(iii) provides, in part:

> "If Club is ordered by a final order of such Court of final appellate jurisdiction to play other than at the Stadium or the franchise is acquired by eminent domain, this agreement shall terminate at Club's option."

Tr. at p. 1-37.

[35] Tr. at p. 2-66.

19. On April 5, 1984, the CIB sent a letter to Chernoff, as a representative of the plaintiff. The letter was prepared at the direction of Frick on behalf of the CIB and demanded fulfillment of plaintiff's contractual obligations to the CIB.[36] The plaintiff made no written response to the letter.[37]

20. The CIB has to date taken several actions in reliance upon the CIB Agreement and its performance by the plaintiff, some of which commenced as early as March 28, 1984. These actions have included making arrangements for moving the personal property of the plaintiff from Maryland to Indianapolis, making arrangements for accommodation of plaintiff's personnel, provision of a temporary practice and office complex at a local school facility and incurring of expenses therefor, sending of notices to suite license-holders increasing their license fees, modifying the Hoosier Dome and acquiring costly new

---

[36] Tr. at pp. 2-132 to 2-133. The letter was admitted into evidence as Plaintiff's Exhibit 1. In his testimony, Frick explained the purpose of the letter:

> Q Explain if you will, why you felt that this letter should be sent and what its purpose was.
>
> A We were concerned about what we felt was an unconstitutional assertion of emminent [sic] domain power on the part of the City of Baltimore, and we wanted the Indianapolis Colts to be aware that we expected them to live up to their contractual obligations to the Capital Improvement Board here in Indianapolis. We wanted to put them on notice and demand the filter [sic] obligations to us.
>
> Q And was the letter so sent to Mr. Chirnoff [sic]?
>
> A It was.

Id.

[37] Tr. at pp. 2-49 to 2-50. Chernoff testified that no response was made because plaintiff was obligated to perform the CIB Agreement. Tr. at p. 2-49.

equipment, and retention of architects to plan a permament training facility.[38]

The Action Against the NFL and Damage to Plaintiff.

21. On April 5, 1984, this Court issued an order restraining Baltimore from continuing its state court action against plaintiff and from instituting additional actions intended to acquire possession of plaintiff's Franchise or property. On April 6, an early morning edition of *The Baltimore Sun*, a Baltimore newspaper, contained a story in which it was reported that a deputy solicitor of Baltimore obtained knowledge of the entry of this Court's order on the evening of April 5, 1984.[39]

22. On April 6, 1984, Baltimore filed an action against the NFL in the Circuit Court for Baltimore City in Equity. The complaint in that action states that the purpose of filing the action is to assist Baltimore in its attempts to acquire the Franchise by eminent domain.[40] On April 6, 1984, the Circuit Court for Baltimore City in Equity

[38] Tr. at pp. 2-126 to 2-128.

[39] *See* Plaintiff's Exhibit 3.

[40] *See* Plaintiff's Exhibit 2. Rhetorical paragraphs 2 and 7 of the complaint provide, in part:

> "For the purpose hereinafter mentioned, it is necessary for your Petitioner to acquire the right to operate the professional football club commonly known as the Baltimore Colts, which football club is a member of the respondent National Football League, ...It is also necessary that your Petitioner acquire all property or interests in property, tangible, intangible, real, personal or mixed; including but not limited to contract rights, personal service contracts, franchise rights and other right or benefit necessary or incident to the full operation of the aforesaid professional football club (collectively, the "Property").
>
> * * *
>
> "The purpose of this Petition is to obtain injunctive relief from various actions of the National Football League, and its constituent teams, as party or parties Respondent, and to effectuate the injunctive relief previously sought and granted in the *ex parte* injunction signed by the Honorable Robert Karwacki of the Circuit Court of Baltimore City."

entered an order (the "NFL Order") enjoining the NFL from engaging in various activities so long as plaintiff was located and operating outside the City of Baltimore.[41]

23. Paragraph 13.1 of the NFL Constitution and By-Laws requires the NFL to prepare a schedule of

[41] *See* Plaintiff's Exhibit 2. Specifically, the NFL Order enjoined the NFL for 35 days from:

> "Transferring, approving, submitting for approval, authorizing, assisting in the transfer of the Franchise Certificate of Membership issued to the Baltimore Football Club, Inc., to any other 'Home Territory' as defined in the Constitution and By-Laws of the National Football League, of the Baltimore Football Club, Inc., to any place other than the City of Baltimore, Maryland;
>
> "Preparing, causing to be prepared, publishing or in any other way drafting a schedule of games for member teams wherein the 'Home Territory,' as defined in the Constitution and By-Laws of the National Football League, of the Baltimore Football Club, Inc., is any place other than the City of Baltimore, Maryland;
>
> "Approving any broadcast or telecast sponsor pursuant to any contract submitted to the Respondent National Football League pursuant to the requirements of its Constitution and By-Laws, where the 'Home Territory' of the Baltimore Football Club, Inc., as defined in the Constitution and By-Laws of the National Football League, is any place other than the City of Baltimore, Maryland;
>
> "Dividing any preseason or regular season television income flowing to the Respondent National Football League with the Baltimore Football Club, Inc., unless and until the 'Home Territory' of the Baltimore Football Club, Inc. is the City of Baltimore, Maryland;
>
> "Approving any contract submitted to the Respondent National Football League pursuant to the requirements of its Constitution and By-Laws, where the 'Home Territory' of the Baltimore Football Club, Inc., as defined in the Constitution and By-Laws of the National Football League, is any place other than the City of Baltimore, Maryland;
>
> "Taking any action to diminish, impair or inpugn the 'Territorial Rights' of Baltimore Football Club, Inc., as those territorial rights exist in the Home Territory of the City of Baltimore, Maryland;
>
> "Making any Schedule Adjustments, as defined in the Constitution and By-Laws of the National Football League in Article XIII, to any extant Schedule in force and effect on the date which relief is granted pursuant to this Amended Petition;...."

professional football games. Paragraph 10 of the NFL Constitution and By-Laws requires that all contracts for the telecasting or broadcasting of football games be approved by the NFL. Paragraph 15.4 of the NFL Constitution and By-Laws gives the NFL the power to disapprove any contract between a member club and a player.[42]

24. The entry and continuation in effect of the NFL Order substantially interferes with and impairs the ability of the plaintiff to operate in the ordinary course of business in Indianapolis.[43]

25. The restriction on scheduling contained in the NFL Order is injurious to plaintiff in that it will prevent the plaintiff from playing games in Indianapolis, causing the plaintiff to forego substantially greater amounts of ticket revenue than could be earned by playing in the City of Baltimore.[44] Forcing the plaintiff to play its 1984 home games in the City of Baltimore might also place plaintiff's personnel in physical jeopardy and could disrupt plaintiff's operations.[45]

---

[42] These NFL By-Law provisions are quoted in the complaint admitted as part of Plaintiff's Exhibit 2. *See also* Tr. pp. 1-52 to 1-62.

[43] Tr. at p. 2-95.

[44] Tr. at pp. 1-52 to 1-53, 2-79 to 2-82. Chernoff testified on cross-examination that even the minimum guarantee under the CIB Agreement would result in receipt of approximately $3.7 million more than last year's season ticket sale revenue in the City of Baltimore. Tr. at p. 2-81.

[45] Tr. at pp. 2-83 to 2-92. Chernoff testified that returning to the City of Baltimore would have "a disasterous effect" upon the team:

> "You said you wanted to go back. A move back to Baltimore, for example, would also mean tearing apart the organization again and attempting to rebuild in a very short timeframe: our draft is May 1st, our mini-camp where we bring in some of the players is June 30th, our training camp opens July 15th. So to tear it apart, to uproot it again now and move back there would have a disasterous effect upon our season performance of the club, number one. That I don't believe you can put in terms of dollars."

Tr. at pp. 2-91 to 2-92.

26. The restriction on approval of telecast and broadcast contracts in the NFL Order will adversely affect plaintiff's ability to negotiate with television stations for televising preseason games and with radio stations for broadcasting all games. Part and parcel of any such contracts are coverage of and promotional responsibilities connected with the NFL Player Draft, scheduled for May 1, 1984. If plaintiff cannot obtain the necessary approvals of contracts for coverage and promotion of the Draft, plaintiff's promotional program will be damaged.[46]

27. The restriction on approval of player contracts in the NFL Order will injuriously affect plaintiff's current attempts to negotiate and contract with players who are "free agents"[47] and plaintiff's negotiations and attempts to

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[46] Tr. at pp. 1-54 to 1-59, 2-93 to 2-98. Chernoff testified that as a result of the eminent Draft and promotional responsibilities, the potential harm to plaintiff's operations is immediate:

> Q Mr. Chernoff, the radio and telecast coverage that you are negotiating for now centers primarily on the commencement of games by the Colt team, right?
>
> A I believe you are looking at it in a short-sighted way. We are looking at a total spirit, a total attitude that is built and is constructed from day one, not just the games themselves. It is the games that are in the background that are important, but if you don't have the spirit and if you don't have the desire to watch those games there is no sense in setting them back.
>
> Q And you think that the May 1 coverage of the draft is essential in that respect?
>
> A The draft is the lifeblood of every franchise.
>
> Q We understand that. But the coverage of it, is that the lifeblood of your franchise to May 1 this year?
>
> A That is part of the franchise.

Tr. at pp. 2-96 to 2-97.

[47] Tr. at pp. 1-59 to 1-61, 2-98 to 2-101. The NFL Constitution and By-Laws provides that any player contract not disapproved within 10 days is deemed approved. The terms of the NFL Order suggest that "approval" by *inaction* may be prohibited as well. *See* note 37, *supra*. This interpretation of the NFL Order was advanced by Chernoff in his testimony. Tr. at pp. 2-100 to 2-101.

contract with players drafted in the NFL Draft on May 1, 1984.

28. Baltimore introduced no evidence of potential injury to it from the entry of a Supplemental Restraining Order as requested by plaintiff, from this Court's failure to dissolve its order of April 5, 1984, or from this Court's failure to enter a preliminary injunction as requested by Baltimore.

29. The plaintiff has begun taking orders for season tickets to its 1984 home football games in the Hoosier Dome. The sale of season tickets is contemplated by the CIB Agreement, involves obligations from plaintiff under that Agreement,[48] and constitutes a normal business activity of plaintiff. Any inability of plaintiff to complete these sales and obtain the income therefrom would have a substantial adverse effect upon the value of the Franchise.[49]

30. The present market value of the tangible personal property owned by plaintiff is less than One Hundred Thousand Dollars ($100,000.00).[50] This value and the value of the Franchise will be decreased if the plaintiff is not permitted to sell tickets, play its home football games in Indianapolis, enter into approved telecast and broadcast contracts, enter into approved player contracts, and otherwise engage in its normal business activities in Indianapolis.[51]

31. Unless Baltimore is restrained from prosecuting or continuing its action against the National Football League, the CIB will be unable to reserve other events at the Hoosier Dome for those dates reserved under the Agreement for the Colts from August to December, and the CIB will not be

---

[48] *See* Tr. at p. 1-29; Baltimore Exhibit A.

[49] *See, e.g.*, Tr. at pp. 1-45 to 1-46.

[50] Tr. at p. 1-73.

[51] Tr. at pp. 1-72, 1-45 to 1-46.

able to rent the facility for other purposes. Moreover, the CIB will lose its largest single source of annual revenue ($2,600,000.00 in 1984) if the Colts' pre-season and regular season games are not played in the Hoosier Dome.

32. There was no evidence presented or received that any restraining order or injunction of any court anywhere was issued against the CIB prohibiting the negotiation, execution on March 28, 1984, and ratification of the Agreement on March 31, 1984.

Conclusions of Law

Based upon the foregoing findings of fact, the Court now makes the following conclusions of law.

1. Statutory interpleader is an equitable action with subject matter jurisdiction founded on 28 U.S.C. §1335. Pursuant to §1335, plaintiff bears the burden of demonstrating the existence of adverse claims or potential adverse claims to the res in dispute. The burden of proving the equitable defense of unclean hands is upon Baltimore, the party which raised the defense.

2. Pursuant to the nationwide service of process afforded by 28 U.S.C. §2361, this Court has acquired in personam jurisdiction over the defendants, Baltimore and the CIB. *See, e.g., General Electric Company v. Bucyrus-Erie Company*, 550 F. Supp. 1037, 1043 (S.D. N.Y. 1982).

3. Plaintiff has demonstrated sufficient adverse claims, or potential adverse claims, between Baltimore and the CIB to confer interpleader jurisdiction on this Court pursuant to 28 U.S.C. §1335.

4. The amount in controversy is greater than Five Hundred Dollars ($500.00).

5. The bond submitted by plaintiff, in the amount of Ten Thousand Dollars ($10,000.00), is adequate to assure the Court that the plaintiff will comply with the orders of the Court. 28 U.S.C. §1335.

6. Accordingly, this Court has subject matter jurisdiction of this interpleader action.

7. Baltimore has failed to prove that the plaintiff came into this Court with unclean hands, and the Court concludes that the plaintiff does not have unclean hands. Plaintiff's actions in moving to Indianapolis immediately after executing the CIB Agreement, and prior to the entry of the First Restraining Order, show only that plaintiff acted quickly and providently to protect its interests in its business property under a free enterprise system. This Court will not therefore exercise its equitable discretion to deny plaintiff the remedy of interpleader.

8. Contrary to the suggestion filed with the Court, this action is not stayed by the automatic stay in bankruptcy, 11 U.S.C. §362.

9. The res involved in this action is the rights and privileges of the plaintiff's franchise and the property rights incident to the operation thereof.

10. In order to protect the res, the NFL must be permitted to exercise its functions under the Franchise.

11. In order to preserve the value of the res and this Court's jurisdiction over the res, the plaintiff must be allowed to conduct its normal business operations, to sell tickets to football games, and to otherwise maintain its ongoing business. The status quo which must be preserved by this Court pending final determination of this action is the existence and viability of an ongoing business and an operating franchise. The damages shown by the plaintiff which would result from an interruption of its business as a consequence of the continuation of the NFL Order, the dissolution of this Court's April 5, 1984 order, or the entry of the preliminary injunction requested by Baltimore would constitute irreparable harm for which the plaintiff would have no adequate remedy at law. In addition, an order entered by this Court preserving the value of the res and allowing the plaintiff to continue to operate in the

ordinary course of business would be consistent with the April 6, 1984 order of the United States Bankruptcy Court for the District of Maryland. The Colts and the CIB have acted in reliance upon the Agreement between them in transferring the Franchise from Baltimore, Maryland to Indianapolis, Indiana.

12. The CIB has demanded that the Colts perform their existing obligations under the terms of the Agreement, and that upon failure of the Colts to so perform, the CIB may elect to institute suit against the Colts for enforcement of the terms and provisions of the Agreement.

13. In entering into the Agreement of March 28, 1984, and in transferring the Franchise from Baltimore to Indianapolis on that date, neither the Colts nor the CIB acted in contravention of any restraining order or injunction of the Maryland state courts or any other court.

14. The Colts having made an Agreement before the institution of the condemnation action to play home games at the Hoosier Dome, the provisions of paragraph 21.6(a)(i) of the Agreement were no longer applicable. If any of the terms of paragraph 21.6(a) were applicable after March 28, 1984, the pertinent subparagraph would have been (iii) at Colts' (Club's) option.

15. Baltimore has failed to demonstrate that counsel for plaintiff have violated Rule 11, Federal Rules of Civil Procedure, and Baltimore's motion for sanctions thereunder should accordingly be denied.

16. Baltimore's motion to dissolve this Court's order of April 5, 1984, should be denied.

17. The Motion for Preliminary Injunction, filed by Baltimore and seeking *inter alia* to enjoin ticket sales and the conduct of business operations by plaintiff should be denied.

18. It is necessary that this Court's order of April 5, 1984, be supplemented by the issuance of a Supplemental

Restraining Order enjoining Baltimore from continuing its action against the NFL, requiring Baltimore to notify the NFL that the NFL Order will not be enforced, and enjoining Baltimore from instituting or prosecuting further suits in any state or United States court directly affecting the res.

19. This Court retains jurisdiction of this cause for the determination of the rights of the respective parties in and to the res.

Any finding of fact stated herein which is a conclusion of law is restated as a conclusion of law, and any conclusion of law stated herein which is a finding of fact is restated as a finding of fact.

IT IS SO ORDERED.

Dated this 30th day of April, 1984.

William E. Steckler
United States District Judge

cc:

Mr. William M. Evans
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Indianapolis, IN 46204

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Indianapolis, IN 46204

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANAPOLIS COLTS, *Plaintiff*	)	Civil Action No. IP 84-652-C
v.	)	
MAYOR AND CITY COUNCIL OF BALTIMORE and CAPITAL IMPROVEMENT BOARD OF MANAGERS OF MARION COUNTY, *Defendants*	)	

RESTRAINING ORDER AND ORDER APPROVING BOND

Upon consideration of Plaintiff's prayer and application for a restraining order pursuant to 28 U.S.C. §2361, accompanied by the "Verified Complaint in the Nature of Interpleader, for a Restraining Order and for Declaratory Relief" in support thereof, and by the Bond for Interpleader in the amount of Ten Thousand Dollars ($10,000.00) with Rockwood Insurance Company as surety, and the Court being duly advised in the premises, it is

ORDERED, ADJUDGED and DECREED that during the pendency of this action and until further order of this Court, the Defendant, Mayor and City Council of Baltimore, its officials, agents, servants, employees, and all persons acting in concert and participation with it, be, and are hereby, restrained, enjoined and prohibited from:

1. Prosecuting and continuing Case No. 84-090-060/L18657 in the Circuit Court for Baltimore City at Law, in the United States District Court for the District of Maryland (as Civil Action No. JH84-1294) or in any other court; and from

2. Seeking to extend or otherwise prevent the Temporary Restraining Order issued by said Circuit Court on March 30, 1984, from expiring by its terms on April 9, 1984; and from

3. Instituting, continuing or seeking relief in any action to acquire ownership, through the power of eminent domain or otherwise, of the Franchise granted to the Plaintiff by the National Football League or of any property of the Indianapolis Colts.

IT IS FURTHER ORDERED that the amount and surety of the Bond for Interpleader filed by the Plaintiff be, and are, deemed proper and are approved.

IT IS FURTHER ORDERED that a copy of this Order and of Plaintiff's Verified Complaint and Bond for Interpleader, together with proper summons, be served immediately upon said Defendant by the United States Marshal Service.

DATED this 5th day of April, 1984.

Hour of Issuance: 5:15 o'clock P.M.

William E. Steckler
Judge, United States District Court
for the Southern District of Indiana

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANAPOLIS COLTS	)	
	)	
v.	)	IP 84-652-C
	)	
MAYOR AND CITY COUNCIL OF BALTIMORE and	)	
CAPITAL IMPROVEMENT BOARD OF MANAGERS OF MARION COUNTY	)	

SUPPLEMENTAL RESTRAINING ORDER

Upon consideration of the Petition for Hearing and Supplemental Restraining Order filed by plaintiff, Indianapolis Colts, and the Court having scheduled and held a hearing on that petition and having determined that sufficient claims or potential claims exist under 28 U.S.C. §1335 for interpleader to be maintained and that a Supplemental Restraining Order should issue,

IT IS ORDERED, ADJUDGED and DECREED that during the pendency of this action and until further order of this Court, the defendant, Mayor and City Council of Baltimore, its officials, agents, servants, employees, and all persons acting in concert and participation with it, be, and are hereby, restrained, enjoined and prohibited from:

1. Prosecuting and continuing Case Number 84097029/E-18941 in the Circuit Court for Baltimore City in Equity or in any other court; and from

2. Failing or refusing to notify the National Football League within five (5) days of the date of this Order, that Mayor and City Council will not prosecute or continue Case Number 84097029/E-18941 in the Circuit Court for Baltimore City in Equity or any

other court and will not seek any relief against the National Football League out of or connected with the order issued by the Circuit Court for Baltimore City in Equity on April 6, 1984, in connection with that case; and from

3. Instituting or prosecuting any proceeding in any State or United States Court affecting directly the Franchise granted to the Indianapolis Colts by the National Football League, the use of said Franchise by the Indianapolis Colts, or the property of or use of such property by the Indianapolis Colts, subject, however, to the jurisdiction of the United States Bankruptcy Court for the District of Maryland in Case No. 84-B-0526.

IT IS FURTHER ORDERED that a copy of this Supplemental Order be served immediately upon said defendant by the United States Marshal Service.

Findings of fact and conclusions of law will follow.

Dated this 19th day of April, 1984.

Hour of issuance: 5:23 P.M.

William E. Steckler
United States District Judge

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

OCTOBER 15, 1984.

Before

Hon. WALTER J. CUMMINGS, *Chief Judge*
Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. HARLINGTON WOOD, JR., *Circuit Judge*
Hon. RICHARD D. CUDAHY, *Circuit Judge*
Hon. JESSE E. ESCHBACH, *Circuit Judge*
Hon. RICHARD A. POSNER, *Circuit Judge*
Hon. JOHN L. COFFEY, *Circuit Judge*
Hon. JOEL M. FLAUM, *Circuit Judge*

INDIANAPOLIS COLTS, *Plaintiff-Appellee,* No. 84-1649 v. MAYOR AND CITY COUNCIL OF BALTIMORE, *Defendants-Appellants,* and CAPITAL IMPROVEMENT BOARD OF MANAGERS OF MARION COUNTY, *Defendant-Appellee.*	) Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division) No. 84 C 652 WILLIAM E. STECKLER, *Judge*

ORDER

On consideration of the petition for rehearing, and a vote for rehearing *en banc* requested by Judge John L. Coffey, a majority of the active members of the Court have voted to deny a rehearing *en banc*.[1] A majority of the judges on the original panel[2] have voted to deny the petition for rehearing. Accordingly,

It is ordered that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

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[1] The Honorable Richard D. Cudahy, and The Honorable John L. Coffey, voted to rehear *en banc*.

[2] The Honorable John L. Coffey voted to grant the petition for rehearing.

DISTRIBUTED
FEB 28 1985
FILED
FEB 28 1985
ALEXANDER L. STEVAS
CLERK

No. 84-1137

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

INDIANAPOLIS COLTS,

Petitioner,

vs.

MAYOR AND CITY COUNCIL OF BALTIMORE, and CAPITAL IMPROVEMENT BOARD OF MANAGERS OF MARION COUNTY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

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Attorneys for Respondents Mayor and City Council of Baltimore

Dated: February 27, 1985

Pandick

BEST AVAILABLE COPY

QUESTIONS PRESENTED

Whether the federal interpleader statute, 28 U.S.C. § 1335, encompasses an action where the purported claimants seek different stakes, one seeking to acquire the property of plaintiff and the other seeking performance of an unrelated contractual obligation of plaintiff.

Whether the federal interpleader statute, 28 U.S.C. § 1335, encompasses an action where plaintiff has no real fear of vexatious litigation because it has contracted with one claimant to terminate its obligations to that claimant in the event of litigation with a second claimant.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

INDIANAPOLIS COLTS,

Petitioner,

vs.

MAYOR AND CITY COUNCIL OF BALTIMORE, and CAPITAL IMPROVEMENT BOARD OF MANAGERS OF MARION COUNTY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioner's "Statement of the Case" is argumentative, incomplete and inaccurate; it lacks virtually any citation to the record and relies almost exclusively upon legal conclusions proposed by the Club and adopted by the district court as "facts." The Mayor and City Council of Baltimore ("Baltimore")[1] provide the following statement.

A. Factual Background

For more than 30 years, the City of Baltimore has been the home of the Baltimore Colts, a professional football franchise established by the National Football League ("NFL"). The

[1] Baltimore has no parent or subsidiary corporations.

franchise agreement designates Baltimore as the city in which the franchise must play its home games. Since 1953, the team has taken its name from its home city, Baltimore, and Maryland's long tradition of professional horse breeding. Home games of the Colts have been played in Baltimore's Memorial Stadium. The current owner of the franchise is Robert Irsay's Indianapolis Colts, Inc., formerly known as the Baltimore Football Club, Inc. ("Club"). (Complaint, Docketed 4/5/84; Petition for Hearing and Supplemental Restraining Order, Ex. B thereto, Docketed 4/11/84)[2]

During February and March 1984, the Club and the Capital Improvement Board of Managers of Marion County ("CIB") held discussions about moving the Club's operations to Indianapolis, where CIB operates the Hoosier Dome stadium. In those meetings, the Club and CIB negotiated a draft lease agreement for rental of the Hoosier Dome. Because the parties "contemplated" and "recognized" the strong likelihood that Baltimore would file a suit to condemn the Club's franchise, the Club obtained CIB's agreement to various escape clauses in the lease that permit the Club to terminate the lease in the event of one or more contingencies, including the filing of a condemnation suit. (Tr. Vol. II, 2-106-08, 2-112-16)

Upon learning that the Maryland Senate had passed a long-pending bill enabling Baltimore to condemn sports franchises, Irsay decided on March 28, 1984 to attempt to flee the jurisdiction of the Maryland courts by moving the Club's athletic equipment and office supplies out of Maryland. That afternoon, representatives of the Club and CIB signed the lease agreement in Indianapolis, subject to approval by CIB at a public meeting on March 31, 1984. (Tr. Vol. II, 2-11-13, 2-15,

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[2] Unless otherwise noted, references are to the record of the district court. "Tr. Vol." refers to volumes of the transcript of the hearing in the district court on April 18-19, 1984, Docketed 4/23/84 and 4/24/84. "A" refers to petitioner's Appendix filed herein. "Petition" refers to the Club's Petition for Writ of Certiorari filed herein.

2-18-20, 2-114-116, 2-118-119; Tr. Vol. III, 32-33, 37-43) Overnight, the Club moved less than $100,000.00 worth of equipment and supplies out of Maryland. At no time has the Club sought the necessary approval from the NFL to change the designated city of its franchise agreement from Baltimore to Indianapolis. (Tr. Vol. I, I-72-73; Tr. Vol. III, 16) *Cf. Los Angeles Memorial Coliseum Commission* v. *National Football League,* 726 F.2d 1381, 1385 n.1 (9th Cir.), *cert. denied,* 105 S. Ct. 397 (1984).[3]

On March 30, 1984, pursuant to the newly-enacted legislation, Baltimore filed a condemnation suit in Maryland state court to acquire the Club's franchise under the city's sovereign powers of eminent domain. The Maryland court forthwith enjoined the Club from taking any action or inaction to transfer the franchise. (Complaint, Exs. A and B thereto, Docketed 4/5/84)

B. Proceedings Below

Three days after removing the condemnation suit to the federal court in Maryland, the Club filed the instant "interpleader" action in the federal court in Indianapolis on April 5, 1984. Seeking protection of statutory interpleader under 28 U.S.C. § 1335, the Club alleged that it was the stakeholder of an NFL franchise subject to conflicting claims by Baltimore and CIB arising out of the condemnation suit and the lease agreement, respectively. The Club made no mention of the numerous escape clauses in the lease agreement that released it from any liability to CIB under the circumstances then pending. (Complaint, Docketed 4/5/84) On the same day the Club filed

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[3] The by-law *as applied* in the *Los Angeles Memorial Coliseum* case, in which the NFL voted to deny the Oakland Raiders permission to move to Los Angeles where the Raiders would be in direct competition with the Los Angeles Rams, raised antitrust concerns not here applicable.

its Complaint, the district court entered an *ex parte* restraining order against Baltimore ("April 5 Order") which prohibited Baltimore from prosecuting its condemnation suit and from seeking to extend the restraining order in that suit. (Restraining Order and Order Approving Bond, Docketed 4/5/84)

On the next day, April 6, the Club, in a related matter, told the United States Bankruptcy Court for the District of Maryland:

> Now, the relief sought in the [Club's] case pending in Indiana doesn't seek to adjudicate any rights to the property of the alleged debtor [the Club]. It seeks an order declaring that the franchise has been validly relocated from Baltimore to Indianapolis. That is to say, it seeks an order that the business has been moved.

(Appendix of Defendants-Appellants Mayor and City Council of Baltimore, filed June 4, 1984, in *Indianapolis Colts* v. *Mayor and City Council of Baltimore,* No. 84-1649 (7th Cir.), at A-237)

Baltimore filed an action against the NFL in Maryland state court on April 6 and obtained an order enjoining the NFL from taking any action to aid the possible transfer of the Club's franchise out of Baltimore during the pendency of the condemnation proceeding. After a hearing held on April 18-19, the district court below granted the Club's motion for a supplemental restraining order enjoining Baltimore from prosecuting the NFL suit ("April 19 Order"). (Supplemental Restraining Order, April 19, 1984, Docketed 4/19/84; Tr. Vol. V, 5-3-5-8) Baltimore appealed the April 5 and April 19 Orders pursuant to 28 U.S.C. § 1292(a)(1) and filed an emergency motion in the Court of Appeals for a stay of those orders pending appeal. (Emergency Motion of Defendants-Appellants For Stay and Injunction Pending Appeal, filed April 23, 1984, in *Indianapolis Colts* v. *Mayor and City Council of Baltimore,* No. 84-1649 (7th Cir.))

On May 8, 1984, the Court of Appeals issued an opinion and order granting Baltimore's emergency motion for a stay of the district court's orders. In a seven page opinion for a unanimous panel, Judge Posner concluded that the Club was forum shopping under the ruse of interpleader and stated that it "seems quite likely" that "this suit was brought in bad faith."[4] (A-22) The court stated further:

> [T]he Club appears to have no claim against the City on which a suit of any sort could be founded; it merely wants a stay of the City's eminent-domain suit. It could ask the court in Maryland where the suit is pending for such a stay, of course, but evidently it thinks its request will be more favorably received in Indiana. But it has to get into court in Indiana, and it can do that only by way of the interpleader jurisdiction. We cannot imagine any other motive for this action.
>
> The Colts are in that exceptionally common situation where their ability to perform a contract may be imperiled by a lawsuit; and they just want to shift the lawsuit to their new home ground, by using the interpleader statute to get personal jurisdiction of the plaintiff there, which they could not otherwise get. This is not what the statute was intended for.
>
> * * * *
>
> The fact that the Club filed the present suit and moved to enjoin the City of Baltimore from proceeding with the action in Maryland indicates that, now that the Club has relocated to Indianapolis, it would prefer to proceed in a federal district court there than in Baltimore. But it was not to foster forum shopping that the interpleader jurisdic-

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[4] Although the Club correctly notes that the Court of Appeals issued two written opinions herein (A-1-9, A-17-23), its assertion that the court's first order staying injunctions issued by the district court contained "tentative conclusions . . . not adopted" by the court in its second opinion is incorrect. Both panels concluded that this case does not meet the jurisdictional requirements of 28 U.S.C. § 1335. (A-3-5, 22)

> tion, with its unusual feature of nationwide service of process that forces defendants to defend in jurisdictions where they could not otherwise be sued, was created.

(A-20-21)

On August 10, 1984, the Court of Appeals vacated the district court's April 5 and April 19 Orders and remanded with instructions to dismiss the Club's complaint. The court found that CIB and Baltimore were not asserting conflicting claims to a single stake and that the jurisdictional requirements of 28 U.S.C. § 1335 therefore were not satisfied. Rejecting the Club's assertion that both CIB and Baltimore asserted claims to the Club's franchise, the court found that "Baltimore seeks ownership of the Colts franchise" through eminent domain, whereas CIB seeks the Club's performance of its contractual obligations under the lease agreement. (A-4) The court further held that because the lease agreement "does not give the CIB a present right to buy the Colts, [it] does not raise a claim against the franchise conflicting with Baltimore's claim." (*Id.*)

The court held alternatively that, even if conflicting claims to the same stake did exist, the Club "[does] not face a reasonable danger of multiple liability or vexatious, conflicting claims[.]" (A-3) The court held that any such risk was foreclosed under an "escape" clause in the lease agreement which specifically provided that "the lease obligations [of the Club] will terminate at the Colts' option if the Colts' franchise is acquired by eminent domain." (A-6-7)

The Court of Appeals subsequently voted 6-2 to deny rehearing *en banc.* (Order of October 15, 1984) On November 8, 1984, the district court entered an order dismissing the complaint herein. (Order of November 8, 1984)

SUMMARY OF REASONS FOR DENYING PETITION

The Club contends that the Court of Appeals misconstrued the federal interpleader statute, 28 U.S.C. § 1335, in finding that CIB and Baltimore are not claimants to a single stake. However, the Club does not contest the finding below that CIB does not seek the Club's franchise. CIB seeks only to enforce the Club's contractual obligations under the lease agreement. Baltimore, in contrast, seeks to actually acquire the Club's franchise through its condemnation suit. Because CIB and Baltimore thus seek different stakes, § 1335(a)'s jurisdictional requirement that a single stake be the subject of adverse claims is not satisfied here.

Section 1335(b)'s provision that adverse claims need not be identical or of the same origin does not, as the Club suggests, vitiate the single stake requirement. Section 1335(b) merely modifies § 1335(a); it does not provide an alternative basis of jurisdiction. The formless yearnings of two cities to have NFL football games played in their stadia are not competing claims to a single stake under § 1335(a).

Moreover, the Club admits that it does not seek a complete resolution of the claims alleged. It seeks only to have the Indiana federal court decide preliminary questions of Maryland law governing Baltimore's condemnation powers. Should those questions be resolved in Baltimore's favor, the Club admits the interpleader suit would be at an end. No ultimate resolution of the parties' claims would result, and the purpose of interpleader would be defeated.

Contrary to the Club's assertions, the Seventh Circuit's holding is in complete accord with the holdings of this Court and the other circuits. The Club's strained efforts to reinterpret cases involving conflicting claims to the proceeds of insurance policies merely confirm § 1335(a)'s requirement that such claims address a single identifiable stake. Moreover, this Court held in *State Farm Fire & Casualty Co.* v. *Tashire,* 386 U.S. 523 (1967), that § 1335 should not be abused by purported

stakeholders to deprive claimants of their choice of forum. The Court of Appeals correctly recognized that such an improper purpose was the only apparent motive for the Club's complaint herein.

Finally, even if a single stake were the object of both claimants here, the Club is not subject to the risk of double liability or vexatious litigation. In anticipation of Baltimore's condemnation suit, the Club insisted upon numerous escape clauses in its lease agreement with CIB, each of which permits the Club to terminate its obligations to CIB and thereby eliminate any threat of suit by CIB. Notwithstanding its contractual protection from suit by CIB, the Club brought this action alleging it had no such protection and sought to shut down Baltimore's condemnation suit. The Court of Appeals properly rejected the Club's attempts at forum shopping and dismissed the complaint herein for lack of interpleader jurisdiction.

ARGUMENT

I. The Court of Appeals Correctly Applied the Jurisdictional Prerequisites of 28 U.S.C. § 1335

The Club asserts that the Court of Appeals misapplied 28 U.S.C. § 1335 in finding that interpleader jurisdiction is lacking in this case. The Club bases its argument on a misunderstanding of the interrelationship of § 1335(a) and § 1335(b). Section 1335(a) sets forth a jurisdictional requirement that plaintiff allege adverse claims to a *single* stake, whether it be money, property or benefits arising from an oral or written obligation.[5] Section 1335(b) does not alter this requirement; it simply provides that the claims to the single stake need not be of the same character.[6] The Club ignores the requirements of § 1335(a) and contends that § 1335(b) sets forth the only limitation on interpleader jurisdiction. (Petition 12-15)

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[5] 28 U.S.C. § 1335(a) (emphasis added) provides in part:

> (a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if
>
> (1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to *such* money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any *such* obligation. . . .

[6] 28 U.S.C. § 1335(b) provides:

> (b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

Interpleader jurisdiction exists under 28 U.S.C. § 1335(a) only if the claimants are seeking the *same* money, the *same* property, or benefits arising by virtue of the *same* note, bond, certificate, policy, instrument, written obligation, or unwritten obligation. Section 1335(b) does not broaden the concept of a stake. Rather, that provision makes clear that, so long as the claimants are seeking the *same* money, the *same* property, or benefits arising by virtue of the *same* note, bond, certificate, policy, instrument, written obligation, or unwritten obligation, the nature of the claim is irrelevant. Section 1335(a) thus concerns what stake is claimed; § 1335(b) concerns how that particular stake is claimed.

Nothing claimed by CIB arises by virtue of the franchise agreement which establishes Baltimore as the Colts' designated city. Nothing claimed by Baltimore arises by virtue of the lease executed by CIB and the Club. In short, Baltimore and CIB are not claiming to be entitled to the same property or to benefits arising from the same obligation as required by § 1335(a).

The Court of Appeals properly concluded that "CIB and Baltimore do not have conflicting claims over a single stake." (A-3) Baltimore seeks to acquire the franchise; CIB seeks the performance of the Club's contractual obligations under the lease agreement. The Club distorts this plain holding by stating that the court found "*CIB's claim to the Colts' franchise* arose under a lease and *Baltimore's claim to the Colts' franchise* arose by eminent domain. . . ." (Petition 9; emphasis added) The Club contends that CIB and Baltimore are claiming a single stake because both "are seeking the same result—the playing of NFL football games in their respective cities." (Petition 13) This argument perverts § 1335(a) by equating the ultimate "result" desired with the singular fund—money, property, note, bond, policy of insurance or written or oral obligation—which alone constitutes a stake under the statute.

The Club then attempts to ignore § 1335(a) by pretending that "federal jurisdiction is predicated only on the *adversity* of the claims, rather than their origins or identity." (Petition 12; emphasis in original) Thus, the Club argues that § 1335(b) supersedes the prerequisites of § 1335(a). (Petition 12-15) However, the permissive character of the language of 28 U.S.C. § 1335(b) indicates that it is nothing more than a gloss on the requirement of "adverse claimants" set forth in § 1335(a); it does not establish an independent basis for jurisdiction. The courts have consistently noted that § 1335(a) sets forth the threshold requirements for interpleader jurisdiction. *See, e.g., State Farm Fire & Casualty Co.* v. *Tashire,* 386 U.S. 523, 526-27 (1967); *Travelers Indemnity Co.* v. *Greyhound Lines, Inc.,* 377 F.2d 325, 326-27 (5th Cir. 1967); *Massachusetts Mutual Life Insurance Co.* v. *Central-Penn National Bank of Philadelphia,* 362 F. Supp. 1398, 1401 (E.D. Pa. 1973).[7] In effect, the Club does not even address the essential jurisdictional issue: whether there is a single stake in this action. In view of the Club's failure to analyze the controlling statutory language, its assertion that the Court of Appeals has thwarted the will of Congress is empty rhetoric.

The Court of Appeals correctly rejected the Club's arguments, holding that a single stake is a prerequisite for an

[7] In determining whether interpleader jurisdiction exists, the courts' overriding concern has been the object of the alleged conflicting claims, that is, with the stake. *Savage* v. *First National Bank & Trust Co. of Tulsa,* 413 F. Supp. 447 (N.D. Okla. 1976); *accord, Gaines* v. *Sunray Oil Co.,* 539 F.2d 1136 (8th Cir. 1976); *American Fidelity Fire Insurance Co.* v. *Construcciones Werl, Inc.,* 407 F. Supp. 164 (D.V.I. 1975); *Trowbridge* v. *Prudential Life Insurance Co. of America,* 322 F. Supp. 190 (S.D.N.Y. 1971); *Frank Briscoe Co.* v. *Albert Pick Co.,* 282 F. Supp. 321 (D.N.J. 1968). The analytical framework adopted by the Court of Appeals is, therefore, rooted in the language of the statute as well as supported by sound precedent.

interpleader action and that this case involves no such stake.[8] The Club does not dispute the court's holdings that Baltimore seeks the NFL franchise itself and that "CIB has no claim to ownership of the franchise." (A-4) Instead, the Club claims that Baltimore's condemnation suit may preclude the Club's performance of its "contractual obligations" under the lease agreement. (Petition 5) On this basis alone, the Club asserts that CIB's demand that the Club perform its contractual obligations constitutes a "claim to the Colt's franchise [which] arose under a lease." (Petition 9) The court disposed of this contention by pointing out the obvious fact that, absent some basis for asserting a present right to acquire the Club, CIB has no claim to the same property which Baltimore seeks to condemn by eminent domain. As the Seventh Circuit observed:

> [CIB] is just a lessor of a stadium. It did not buy the Colts by signing a lease that obligates the Colts to play all their home games in the Board's stadium for 20 years, or for that matter 2000 years. If the Colts' owner breaks the lease, the Board may be able to get damages for breach of contract; [but] it will not be able to take over the football team.

(A-22) Therefore, the court properly ruled that Baltimore and

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[8] The Court of Appeals stated clearly that its main jurisdictional objection was the absence of a single stake: "A basic jurisdictional requirement of statutory interpleader is that there be adverse claimants to a *particular fund. See Libby, McNeill & Libby* v. *City National Bank,* 592 F.2d 504 (9th Cir. 1978). The CIB and Baltimore are not claimants to the *same stake."* (A-3-4; emphasis added) The court addressed the wholly separate issue of adversity only in connection with an argument now apparently abandoned by the Club. (A-4-5) The Club conveniently obliterates by an ellipsis the distinction drawn by the Court of Appeals between the requirement of a single stake and the requirement that the claimants to that stake be adverse. (Petition 11)

the CIB are not claimants to the same stake.[9] (A-4-5)

Moreover, this action does not qualify as interpleader because it does not promise to put to rest the claims before the court. The extraordinary features available to a plaintiff in a legitimate interpleader suit (minimal diversity, nationwide service of process, injunctions against other suits) are provided so that all claims to the money, property, or benefits of the instrument or obligation in question can be resolved in a single proceeding. 28 U.S.C. §§ 1335(a)(1), 2361. If a complaint does not promise resolution of all the asserted claims in a single proceeding, interpleader jurisdiction is improper. *State Farm Fire & Casualty Co.* v. *Tashire, supra,* 386 U.S. at 534.

The Club attempted to avail itself of interpleader's far-reaching procedural devices even though it has admitted that it is not seeking a complete resolution of the alleged claims herein:

> The Colts, of course, would not be asking the District Court to try Baltimore's eminent domain action in federal court. Rather, as pointed out by counsel for the Colts in oral argument, the District Court will determine only

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[9] The Club seeks to divert the Court from the analysis of property interests and instruments required under § 1335(a) and invites it instead to render a decision based on speculation about the future. That is, the Club asserts that any ownership of the franchise by Baltimore as a result of the condemnation suit will be transitory and that Baltimore will ultimately become a lessor of the next owner of the franchise, just like CIB. This reasoning has at least three flaws. First, jurisdiction must be determined by examining present claims rather than future possibilities. *Walker* v. *Pritzker,* 705 F.2d 942 (7th Cir. 1983). Second, Baltimore seeks ownership without temporal limitation. *Cf. City of Oakland* v. *Oakland Raiders,* 32 Cal. 3d 60, 646 P.2d 835 (1982). Finally, even if the Club were correct and Baltimore eventually becomes no more than a lessor of a new franchise owner, there still would not be a single stake. Baltimore's interest would arise by virtue of a lease of Baltimore's Memorial Stadium to be executed in the future. CIB's interest would still arise from the lease of the Hoosier Dome which it and the Club have already signed. Because the interests of the parties would not arise by virtue of the same obligation, this scenario also fails the jurisdictional test of 28 U.S.C. § 1335(a).

> whether the eminent domain action was properly brought under the Maryland constitution and laws, the United States Constitution and general principles of eminent domain.

(Brief of Plaintiff-Appellee, Indianapolis Colts, filed June 18, 1984, in *Indianapolis Colts* v. *Mayor and City Council of Baltimore,* No. 84-1649 (7th Cir.), at 31 n.12) The Club therefore concedes that if the district court were to conclude that Baltimore's action "was properly brought," Baltimore would be allowed to proceed with its condemnation suit in Maryland, CIB's claims notwithstanding. The lease agreement would have no bearing on the resolution of Maryland eminent domain issues, and no determination of CIB's rights under the lease agreement would result from resolution of those issues in this action. The "conflicting" claims that the Club purportedly seeks to avoid would not be resolved, and the purpose of interpleader would not be served. The condemnation suit would go forward, and the lease agreement would continue in force, subject to the escape clauses. All that the Club would have gained would have been the opportunity to have a "friendly" forum in Indiana decide issues of Maryland eminent domain law. As such, interpleader would have been transformed into an instrument promoting judicial inefficiency. The Court of Appeals recognized the Club's improper motivation and ordered the complaint dismissed. (A-2, 12-14)

II. The Decision Below is in Complete Accord with the Decisions of this Court and the Other Circuit Courts of Appeals

The Club contends that this Court should review the Seventh Circuit's holding because it supposedly conflicts with the interpretation given to the interpleader statute by other courts. The Club attempts to manufacture a conflict by mischaracterizing the Seventh Circuit's opinion as requiring claims that are identical or of common origin and by misconstruing the allegedly "conflicting" decisions. No such conflict exists.

The Seventh Circuit's holding that federal interpleader jurisdiction requires "adverse claimants to a particular fund" is in complete accord with the decisions of this Court and the other circuits. (A-3) In *State Farm Fire & Casualty Co.* v. *Tashire,* 386 U.S. 523 (1967), this Court expressly held that federal interpleader jurisdiction is limited to conflicting claims that can be satisfied from a single, identifiable fund. The Court rejected the argument that the interpleader statute creates jurisdiction to adjudicate claims unrelated to the impleaded stake. The Court thus held that because the impleaded fund defined the boundaries of the lower court's jurisdiction, the plaintiff's attempt in the same suit to quiet claims not directed at the fund itself fell outside of that jurisdiction. *Id.* at 534-36. The Court stressed that interpleader was not intended to act as a general "bill of peace." *Id.* at 535. Moreover, it admonished that interpleader should not be used to "strip truly interested parties of substantial rights—such as the right to choose the forum in which to establish their claims . . . ." *Id.* at 534. Yet, this is precisely what the Club has attempted to do. As the Seventh Circuit observed, there can hardly be "any other motive for this action" than "to shift [Baltimore's condemnation] lawsuit to [the Club's] new home ground, by using the interpleader statute to get personal jurisdiction of [Baltimore] there, which they could not otherwise get." (A-20-21) The Club should not be allowed to force Baltimore to litigate Maryland condemnation questions in Indianapolis.

The other cases cited by the Club likewise are not in conflict with the Seventh Circuit's decision. Each involved claims to a single stake. For example, in *Sanders* v. *Armour Fertilizer Works,* 290 U.S. 190, 199 (1934), each of two insurance companies was "claiming the proceeds of [insurance] policies to the exclusion of the other." Indeed, the Club admits that the conflicting claims in *Sanders* were asserted against a single stake, insurance proceeds: "The insurance companies were thus faced with a contract claim by Sanders to *the money* and an in rem, lien-type garnishment claim by

Armour to *the money.*" (Petition 15-16; emphasis added) Here, in contrast, CIB makes no claim to the franchise itself; it seeks the performance of the Club's obligations under the lease agreement.

Similarly, in *Holcomb* v. *Aetna Life Insurance Co.*, 228 F.2d 75 (10th Cir. 1955), and *Edner* v. *Massachusetts Mut. Life Ins. Co.*, 138 F.2d 327 (3d Cir. 1943), insurance companies filed interpleader actions to resolve adverse claims to the proceeds of insurance contracts. In *Holcomb*, one group attempted to cancel an annuity contract whereas another attempted to keep the policy in force. 228 F.2d at 80-81. In *Edner*, one party claimed the cash surrender value of a life insurance policy whereas the other attempted to keep the policy in force. 138 F.2d at 328. Thus, the adverse claimants in these cases were contesting their rights to a single, identifiable fund. Accordingly, these cases are not in conflict with the decision below.

Indeed, contrary to the Club's argument, the courts have unanimously required the existence of conflicting claims to a single, identifiable stake before asserting interpleader jurisdiction. *See Libby, McNeill, & Libby* v. *City National Bank*, 592 F.2d 504 (9th Cir. 1978); *General Atomic Co.* v. *Duke Power Co.*, 553 F.2d 53 (10th Cir. 1977); Gaines v. *Sunray Oil Co.*, 539 F.2d 1136 (8th Cir. 1976); *General Electric Corp.* v. *Grubbs*, 447 F.2d 286 (5th Cir. 1971), *rev'd on other grounds*, 405 U.S. 699 (1972); *Trowbridge* v. *Prudential Insurance Company of America*, 322 F. Supp. 190 (S.D.N.Y. 1971). For example, in *Libby, McNeill, & Libby, supra*, allegations that plaintiff faced conflicting claims based upon its separate contractual relationships with numerous claimants were held jurisdictionally deficient under § 1335. Although the Ninth Circuit recognized that multiple liability was possible, it held that the statute

> is designed to protect the stakeholder from such liability only when based upon the particular fund proffered by the

> interpleader plaintiff, or put another way, "*when only a single obligation is owing.*"

592 F.2d at 509, quoting *Trowbridge* v. *Prudential Insurance Company of America, supra,* 322 F. Supp. at 192 (emphasis in original).

Thus, the Club's claim of a conflict among the circuits is spurious. The cases upon which the Club relies are consistent with the Seventh Circuit's decision in this case, and no conflict exists.

III. The Court of Appeals Correctly Determined that the Club Has no Reasonable Fear of Double Liability or Vexatious Litigation

In addition to holding that Baltimore and CIB do not seek the same stake, the Court of Appeals ruled that the Club did not meet the equitable requirements for interpleader jurisdiction because it had no real fear of suit by CIB:

> Because the sole basis for equitable relief to the stakeholder is the danger of exposure to double liability or the vexation of conflicting claims, *Texas* v. *Florida,* 306 U.S. at 406, the stakeholder must have a real and reasonable fear of double liability or vexatious, conflicting claims to justify interpleader. Even assuming that Baltimore and the CIB are fighting over the same stake, the Colts do not have a reasonable fear of double liability or vexatious claims here.

(A-6; citations omitted) The court found that the Club had "specifically contracted" in the lease agreement to insulate itself from suit by CIB and that any pretended fear of such a suit was "unreasonable." (A-6-8) This alternative ground constitutes a legally correct and factually unassailable basis for the court's decision.

The Club knew that Baltimore would seek to condemn the franchise and therefore insisted that CIB agree to various escape clauses so that the Club could bail out of its obligations to CIB with impunity. The lease agreement records that the

parties "acknowledged," "recognized" and "contemplated" the imminence of Baltimore's suit, and the Seventh Circuit specifically held that the Club and CIB signed the lease knowing that Baltimore's suit was forthcoming. (A-6, 19)

Based on this knowledge, the Club extracted no fewer than five options to cancel the lease agreement for litigation contingencies. It has or had the power to terminate the lease agreement (a) 30 days after Baltimore's condemnation suit was filed; (b) 90 days after such filing[10]; (c) six months after a court order prohibiting the exhibition of home games in the Hoosier Dome has been in effect[11]; (d) upon entry of a final

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[10] The 30-day and 90-day options are set forth in Paragraph 21.6(a)(i) of the lease agreement, which provides in part:

> (i) If any of the above occur within ninety (90) days of the date of this Agreement, the Club shall give the Board notice in writing, within five (5) days after Club has notice of the occurrence thereof. Club shall then have a thirty (30) day period ("preliminary decision period") within which to notify Board of its preliminary decision as to whether it will transfer the Franchise and play its home games at the Stadium. During this preliminary decision period, the Board's obligations to incur expense for the construction of the Complex (as set forth in Paragraph 12.2(c)) shall be suspended. If during this period, Club decides not to transfer the Franchise and play its home games at the Stadium, this Agreement shall terminate and the parties shall have no further rights or duties hereunder.
>
> During this preliminary decision period, the Club may request an additional sixty (60) day period ("final decision period") within which to make a final decision as to whether to transfer the Franchise and play its League games at the Stadium. During this final decision period the Board's obligations for the construction of the Complex (as set forth in Paragraph 12.2(c)) shall remain suspended. If during this final decision period, the Club decides not to transfer the Franchise and play its home games at the Stadium, this Agreement shall terminate and the parties shall have no further rights or duties hereunder.

[11] Paragraph 24.2 of the lease agreement provides:

> In the event that any games contemplated by this Agreement cannot be played as provided herein as the result of any

(Footnote continued on following page)

unappealable order requiring home games to be played elsewhere (A-7); or (e) upon entry of a final unappealable order of condemnation. (A-7) In its complaint, however, the Club failed to disclose any of its contractual options for avoiding litigation with CIB. Before the Seventh Circuit, the Club argued that only the final option was available and contended it would be in limbo for "years" awaiting a final order of condemnation. (Petition for Rehearing of Plaintiff-Appellee Indianapolis Colts, filed August 24, 1984, in *Indianapolis Colts* v. *Mayor and City Council of Baltimore,* No. 84-1649 (7th Cir.), at 9) Before this Court, however, the Club has dropped that argument and now concedes that it also has an option to terminate the lease agreement upon the entry of a final unappealable order that it play its home games elsewhere. (Petition 18-21) Although the Club evidently believes that its ever-changing interpretation of the lease agreement serves its litigation strategy, no reasonable interpretation justifies the Club's alleged fear of suit by CIB.

The unambiguous language of the lease agreement shows that the Club has amply protected itself from contractual liability to CIB. Yet, before the ink on the lease agreement was dry, the Club filed this action alleging it had no options whatsoever and thereby obtained a restraining order shutting down Baltimore's condemnation suit. Rather than exercising its 30-day or 90-day options at the outset of this litigation, the

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(Footnote contined from preceding page)

> municipal, state, federal or other statute, judgment, order, rule, regulation, ordinance, action, restriction or proclamation, or *in the event that the playing of any such game should be restrained or enjoined by any court* or administrative body, Ratable Amendment, as provided for in Paragraph 24.5 hereof, shall occur *and the same continues for more than six months, Club may in its sole discretion at any time thereafter while such conditions continue terminate without penalty or payment whatsoever* upon thirty (30) days prior written notice to Board and thereupon this Agreement shall cease, terminate and be of no further force or effect in the same manner as if the termination date set forth in such notice were the date herein specifically fixed for the expiration of the Term of this Agreement. (emphasis added)

Club falsely contended it had no such protection.[12] The Club can still walk away from the lease agreement under its six month option, but it now argues for the first time that the option is not available, an interpretation directly contrary to language which the Club had so carefully drafted for its own protection. (Petition 8 n.2)

Thus, the Club simply ignores or grossly misconstrues the escape clauses of the lease agreement to create the illusion of conflicting claims and threatened litigation. The Court of Appeals, having correctly determined that the Club has never been under any real threat of suit by CIB, also divined the Club's motivation: forum-shopping under the guise of interpleader. Although the Seventh Circuit found it unnecessary to determine whether the Club had contrived CIB's lease claims in order to create interpleader jurisdiction, it seemed to the court "quite likely" that "this suit was brought in bad faith." (A-8, 22) Consequently, the Club's complaint was properly dismissed.

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[12] The Seventh Circuit properly concluded that if indeed the Club faces conflicting claims, such a predicament is of its own doing. (A-20) Having signed the lease agreement on the eve of the condemnation suit and then having refused to exercise its options to escape its obligations under the agreement, the Club is clearly not entitled to invoke the equitable jurisdiction of the court with a sham interpleader action.

CONCLUSION

For the foregoing reasons, respondents the Mayor and City Council of Baltimore respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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